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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

2 -----x  
3 UNITED STATES OF AMERICA,  
4 Plaintiff,

03 CR 1322(SJ)

5 versus United States Courthouse  
6 225 Cadman Plaza East  
7 Brooklyn, N.Y. 11201

MOHAMMED AL-MOAYAD, MOHAMMED ZAYED,

8 DEFENDANTS.

9 -----x  
10 January 28, 2005  
11 9:00 a.m.

10 TRANSCRIPT OF JURY SELECTION

11 Before: HON. STERLING JOHNSON, JR.,

DISTRICT COURT JUDGE

12 APPEARANCES

13 ROSLYNN R. MAUSKOPF

United States Attorney - Eastern District of New York  
One Pierrepont Plaza

Brooklyn, New York 11201

15 KELLY MOORE, ESQ.

PAMELA CHEN, ESQ.

16 Assistant United States Attorney★

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

17 ATTORNEY FOR DEFENDANT:

MAR 11 2005 ★

18 WILLIAM GOODMAN, ESQ.

For Al-Moayad

P.M. \_\_\_\_\_

19 TIME A.M. \_\_\_\_\_

JONATHAN MARKS, ESQ.

20 ALMIS JAMAL DEEK, ESQ.

For Zayed

21 Court Reporter: ALLAN R. SHERMAN, CSR, RPR

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24

25 Proceedings recorded by mechanical stenography, transcription  
by CAT.

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1                   THE CLERK: Criminal cause on trial, United States  
2 of America versus Mohammed Al-Moayad and Mohammed Zayed.

3                   (Whereupon, the following took place in chambers.)

4                   THE COURT: Augie said he was provided by one of the  
5 jurors, doesn't know the number -- Augie says that, we have  
6 two jurors. One of the jurors stopped him, gave him this  
7 document and we'll make copies for you.

8                   THE CLERK: Judge, maybe you shouldn't give it to  
9 him first. If he says that is his brother, I guess they are  
10 going to figure out who he is.

11                  THE COURT: We have one with juror and I can show  
12 you.

13                  THE CLERK: He wants to know if we have a press  
14 person in here.

15                  THE COURT: No.

16                  This guy is a Libyan trained assassin who is the  
17 brother of one of the jurors. The other is the fact is that  
18 he has a doctor's note and it has his name on it. It says  
19 that he has bowel problems and the doctor says that he is not  
20 a good candidate for a juror.

21                  What is his number?

22                  THE CLERK: That is juror number 5.

23                  MR. GOODMAN: In seat number 5.

24                  THE CLERK: Actually, I think it's number 5.

25                  MS. CHEN: I don't think that five is on our list.

1                   THE COURT: The next thing is that there was one  
2 juror who is a union worker, makes \$35 an hour and they are  
3 only paying him for six days, this is his last day. It would  
4 be a severe financial hardship if he were to continue. My  
5 suggestion there would be to call up the company and see if we  
6 can get him paid or something like that. I suspect they just  
7 don't want to serve after they have read the papers. There  
8 are two jurors.

9                   MS. CHEN: The union worker was the same.

10                  THE COURT: 2 different jurors. One juror has a  
11 brother who is a terrorist, Texas terror suspect.

12                  MS. CHEN: Just arrested?

13                  THE COURT: No, they are still looking for him.

14                  MR. MARKS: How does that effect him? Is this the  
15 guy with the bowel problem?

16                  THE COURT: Same thing, he has bowel problems and he  
17 has a brother problem.

18                  MR. MARKS: Maybe they are related.

19                  MS. CHEN: For obvious reasons, that person, what I  
20 suggest is that we bring in both of them and speak to them.

21                  MR. MARKS: Okay.

22                  THE CLERK: One at a time?

23                  THE COURT: Yes. If we go without him, and I'm not  
24 saying that we will, that leaves you --

25                  MS. MOORE: 3 alternates.

1 MR. MARKS: 2.

2 THE COURT: 2 alternates. The other thing you have  
3 to worry about --

4 MR. MARKS: We have three alternates.

5 THE COURT: No, four.

6 MR. GOODMAN: We'll start the trial with two  
7 alternates.

8 THE COURT: The thing is what does this mean with  
9 respect to the other jurors? They might want to have some  
10 excusals.

11 MS. MOORE: Is this one person -- he is the bowel  
12 problem and the brother?

13 THE COURT: Yes.

14 MS. MOORE: That is one juror. The other juror we  
15 are still hoping to save if you call the boss.

16 (Juror enters the courtroom.)

17 THE COURT: What is your number?

18 Remember what I told you, everything having to do  
19 with this trial is recorded and recorded in the sense that  
20 there is a court reporter.

21 I have this article where it mentions a terror  
22 suspect eyed in thirty slayings. Is that your brother?

23 A JUROR: That is not my brother. My brother was a  
24 victim.

25 THE COURT: I'm sorry to hear that.

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1                 Could you still be fair and impartial? That is the  
2 main thing.

3                 These defendants are not charged with any acts of  
4 murder or physical terrorism or anything like that and you  
5 indicated you would be fair and impartial before.

6                 A JUROR: Right.

7                 THE COURT: And you -- can you still be fair and  
8 impartial?

9                 A JUROR: Can I say something?

10                THE COURT: Go ahead.

11                A JUROR: Right now my job is moving from Manhattan  
12 to New Jersey. I had to leave here yesterday and go and pack  
13 to 12:00 last night and while I was going through my things, I  
14 found that article in my files and it brought back memories  
15 and it brought this trial into a different light.

16                As far as my medical condition, I'm not even  
17 supposed to be up the way I'm up. I'm getting three to four  
18 hours sleep at night. My colon is inflamed. I'm supposed to  
19 be resting and it's just inconvenience to me right now.

20                I don't mind serving but now is not a good time for  
21 me. It's really not. I'm in charge of the department. I  
22 don't know what is going on. By the time I get to work,  
23 everybody is gone. So I'm working off of phone calls, playing  
24 catchup and everything. I don't think I should be on this  
25 trial. I really don't.

1           THE COURT: Can you step outside for a second.

2           A JUROR: Sure.

3           (Juror leaves chambers.)

4           THE COURT: What we'll do is mark this as Court  
5     Exhibit 1. It's an article from the New York Post dated  
6     November 12 of 1998.

7           He said his brother was a victim. I guess there is  
8     no problems making copies of this.

9           MS.CHAN: Is it a picture of the victim or the  
10    suspect?

11          THE COURT: The suspect.

12          MR. GOODMAN: What is the date of that?

13          THE COURT: We'll make a copy and give it to you.

14     His brother was one of the victims but the doctor's note that  
15     I have, I can't give it to you because it has his name on it.

16          MR. MARKS: Could you just read it to us, Judge, the  
17     doctor's note, without reading his name?

18          THE COURT: Whatever his name is, he is recovering  
19     from I guess diverticulitis. He has trouble with his bowels.  
20     I feel he is not a fit candidate for jury duty at this time.

21          MR. MARKS: Can I tell you the way I read this?

22          MR. GOODMAN: His main problem seems to be his  
23     work situation because his diverticulitis doesn't seem to be  
24     interfering with his going to the job and working until  
25     midnight. So presumably what would happen if he didn't serve

1 on this jury he would go back to work.

2 THE COURT: But you heard him say he is cleaning out  
3 his stuff to move, he comes across a 1998 article and it  
4 brings back memories and now he doesn't feel that he could  
5 serve.

6 MR. MARKS: I didn't hear him say he couldn't serve  
7 because of that article.

8 THE COURT: He said I wouldn't be a fit juror.

9 MR. MARKS: My sense is that his problem is the work  
10 problem. That's what he is concerned about, not so much the  
11 article.

12 THE COURT: What did you hear, Ms. Chen?

13 MS. CHEN: Your Honor, I heard a number of things.  
14 One is that he had some emotional response after coming across  
15 the article again after some years. And the date is 1998 in  
16 the article. And then obviously he has this medical  
17 condition. I think the distinction with work is that it's  
18 harder for him to sit for long periods of time. He didn't say  
19 that but that was my perception.

20 THE COURT: I don't think the main thrust of his  
21 complaint is his work.

22 MR. GOODMAN: Your Honor, it seems to me this is a  
23 juror who had he presented these circumstances, leaving aside  
24 the fact that he --

25 THE COURT: He just said that he just remembered.

1                   MR. GOODMAN: I mean the medical circumstances, if  
2 he brought those to our attention during the voir dire, I  
3 don't have much question he would have been excused for cause.

4                   The problem is that, as you know, it's much harder  
5 now to dismiss him, lose an alternate and risk going down  
6 below 12 jurors.

7                   THE COURT: We have 12 jurors and we have two  
8 alternates.

9                   MR. GOODMAN: I mean during the length of the trial.  
10 That is the risk. So if there is -- I think what I would  
11 request, what I do request is that the Court examine him a  
12 little bit more without putting any pressure on and seeing  
13 whether it would be possible notwithstanding his problems to  
14 accommodate the court.

15                  MR. MARKS: I agree and I also suggest that maybe a  
16 call to his boss would help.

17                  MS. MOORE: The man said he has an inflamed bowel,  
18 he has trouble sitting, he should be resting now.

19                  MR. MARKS: He hadn't said that.

20                  MS. MOORE: My office prosecuted Dexter Francis and  
21 though I wouldn't do anything -- my unit prosecuted Dexter  
22 Francis, this man -- and though I would never do any digging  
23 to find out who this man was, his anonymity is by virtue of  
24 that possibly compromised.

25                  But given what he said about his medical condition

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1 combined with the emotional response to this, it seems that he  
2 is trying to say frankly, that he can't be fair to the  
3 defendants and so I feel like we have alternates for this  
4 reason.

5 If the Court can resolve the union worker situation,  
6 we will still have three alternates going into this trial and  
7 I think that should be sufficient.

8 MR. GOODMAN: I have another suggestion, which is  
9 that the Court examine the second juror, see how vulnerable  
10 the jury is with regard to that person's situation and then  
11 make a decision in light of both examinations.

12 THE COURT: Right now I'm inclined to let this  
13 fellow go for the two reasons; the medical condition --  
14 number 1, I have a doctor's note, I can't release it to you  
15 because it has his name on here; and number 2, he said that he  
16 found this article from 1998 and it triggered memories and he  
17 says I don't think I can be -- serve on this jury.

18 MR. MARKS: Judge, I know that your Honor asked him  
19 the question whether he could be fair and I don't think that  
20 he ever answered it. I would just request that your Honor  
21 have him in again, just find out why it is that he feels that  
22 he can not sit.

23 THE COURT: While I don't think that would be  
24 necessary, I'm going to complete the record, I will do that.

25 My question to the government: Do you feel

1      comfortable going ahead with two alternates?

2            MS. MOORE: Yes, your Honor.

3            MR. MARKS: We don't.

4            MR. GOODMAN: Could you tell me what the date of the  
5      doctor's note is, your Honor?

6            THE COURT: 1/26/05.

7            I'll bring him in, ask him a couple other questions.  
8      I don't read him the way you read him.

9            (Jurors enters the chambers of the judge.)

10          THE COURT: I'd like to ask you a couple of other  
11     questions.

12          You know when you get a group of lawyers, nobody can  
13     ever understand each other or agree.

14          As I understand it, you were rummaging through some  
15     other things, you came across this 1998 article and it  
16     triggered memories.

17          A JUROR: Right.

18          THE COURT: You also have a note which I have, these  
19     lawyers haven't seen it, it has your name on it and I don't  
20     want them to see it. They will not see your name. What is  
21     your number?

22          A JUROR: 5.

23          THE COURT: Then based upon that, you have some  
24     medical problems?

25          A JUROR: Absolutely.

1                   THE COURT: And the doctor has advised that you  
2 should be on bed rest. My question to you is: Do you feel  
3 you can be fair and impartial as a juror? You said something  
4 else about serving. Repeat what you said and then give me the  
5 reason.

6                   A JUROR: Repeat what I said. What did I say?

7                   THE COURT: First of all, why did you bring this to  
8 our attention?

9                   A JUROR: Which one is that?

10                  THE COURT: You have the note and the article?

11                  A JUROR: You mean everything?

12                  Because this is really a bad time for me to be  
13 serving on jury duty and I indicated that on the  
14 questionnaire. Then nobody ever asked me about that, to  
15 elaborate on what I put down there. My department has moved  
16 from New York today. They are moving this morning and I've  
17 been leaving here, going to work at night, packing up things.

18                  THE COURT: I can understand. That is not a legally  
19 sufficient reason. I'm concerned about your medical problem  
20 and.

21                  A JUROR: That?

22                  THE COURT: Yes.

23                  A JUROR: It causes me to have an inflamed colon. I  
24 think it's diverticulitis. When I got to go, I got to go.

25                  THE COURT: I understand that.

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1           A JUROR: And sitting around just isn't -- I'm  
2 supposed to be taking my medication and minimum moving around.  
3 I'm forced to move around now because my department, my job is  
4 moving and I'm not getting any rest at night which he said I  
5 should be getting and eliminating the stress in my life.

6           THE COURT: What about this article relating to your  
7 brother?

8           A JUROR: Okay. I brought that in because of the --  
9 what is this? Just to show that I was a victim of extremists,  
10 trained extremists, trained executioners, whatever, and if  
11 anything is similar to this trial, I think it would be right  
12 for me to put that up front.

13          THE COURT: As I said before, they are not charged  
14 with --

15          A JUROR: Actual doing anything.

16          THE COURT: Right.

17          A JUROR: I understand that.

18          THE COURT: Does that make a difference to you?

19          A JUROR: Yes.

20          THE COURT: That they do not have been charged  
21 with --

22          A JUROR: Does that make a difference to me?

23          THE COURT: Yes.

24          A JUROR: Yes, in this trial, yes.

25          THE COURT: It makes a difference?

1 A JUROR: Yes.

2 THE COURT: In what regard?

3 A JUROR: As far as --

4 THE COURT: As far as being fair and impartial to  
5 both sides.

6 A JUROR: Right now?

7 THE COURT: Yes.

8 A JUROR: At this moment right here?

9 THE COURT: Yes.

10 A JUROR: I say even though I haven't heard anything  
11 yet, right now I'm leaning towards the prosecution. I'll be  
12 honest with you. Straight up.

13 THE COURT: Okay. You can step outside.

14 (Juror leaves the judge's chambers.)

15 THE COURT: What is your application?

16 MS. MOORE: Your Honor, we ask that the juror be  
17 struck for cause, more like relieved for cause.

18 MR. MARKS: Your Honor, notwithstanding the fact  
19 that this juror said that he is leaning towards the  
20 prosecution, we still want to keep him. We're really  
21 reluctant to start this trial with only two alternates.

22 THE COURT: I am going to relieve him because of his  
23 medical condition.

24 Also, because he has read this article that the  
25 parties have been given copies of and he said that he would be

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1 leaning towards the prosecution and even the prosecution says  
2 that they think he should be struck. So I'm going to release  
3 him.

4 Bring in the other juror.

5 (Juror enters chambers.)

6 THE COURT: We are going to let you go but  
7 physically, I don't know when you can leave. They picked you  
8 up by car somewhere?

9 A JUROR: Yes. That is stressful in itself.

10 THE COURT: Being picked up by car?

11 A JUROR: Yes, I can get here faster on my own. I  
12 really could, and where they are picking me up is kind of out  
13 of the way, too. It's a main hub.

14 MS. CHEN: I wouldn't go into it.

15 THE COURT: Now that the press is inquiring, you can  
16 give them a copy of that article.

17 MS. MOORE: I take it that this is not going to be  
18 sealed and they can get the court record.

19 A JUROR: Thank you.

20 THE COURT: I wish you a lot of luck.

21 A JUROR: Thank you.

22 (Juror exits chambers.)

23 THE COURT: His number is 34?

24 MS. CHEN: Yes.

25 THE COURT: This creates some logistical problems

1 for the government also with your witnesses from Germany.

2 MS. MOORE: We will get them on and off.

3 (Pause.)

4 (Juror enters chambers.)

5 THE CLERK: This is juror 137, alternate five.

6 THE COURT: How are you?

7 A JUROR: All right.

8 THE COURT: As I understand it, you have a problem  
9 in the sense that you are only getting paid for six days?

10 A JUROR: My union contract dictates that I get five  
11 days pay for jury duty. After that, I spoke to my employer  
12 last night, he told me he is not paying me for my time.

13 THE COURT: Would it help if I made a telephone call  
14 to your employer?

15 A JUROR: I don't know, I have no answer to that. I  
16 don't know if it will help or it wouldn't because by my  
17 contract, he doesn't have to pay me.

18 THE COURT: I understand that but there are such  
19 things as civic duty. I guess most jury trials last six days  
20 but sometimes there is an exception. I don't want to see you  
21 penalized financially if you have to serve here but I think  
22 that he can make a contribution to justice by paying you.

23 If you want to, you can give me, I don't know your  
24 name, I can get the name of the employer and I as the judge,  
25 can make a telephone call and see if I can prevail upon him to

1 do the right thing?

2 A JUROR: I don't have a problem with that.

3 THE COURT: What we can do, we can get that number  
4 from him. I'll get the number from him and maybe I'll call  
5 him at the break or something like that. We won't excuse him  
6 right now and we can always do that later on if we have to.

7 MS. MOORE: That sounds good.

8 THE COURT: Now, give the number to Augie that we  
9 should call and we'd like to speak to the top guy.

10 A JUROR: Okay.

11 THE COURT: Or have him give me a call so that he  
12 will know that he is speaking to the judge.

13 Who is he?

14 A JUROR: I can write the owner of the company's  
15 name down.

16 THE COURT: All right. So we'll see if we can do it  
17 that way.

18 A JUROR: That is fair.

19 THE COURT: Thanks a lot.

20 (Juror leaves chambers.)

21 THE COURT: This is no secret. We can have this  
22 guy's name. I'll Xerox another copy of that and I'll mark  
23 this as an exhibit and make it part of the file.

24 MS. MOORE: Your Honor, while we're all here,  
25 Mr. Marks had filed a motion I guess at 6:00 a couple of days

1 ago basically seeking to reopen the issue of whether the  
2 defense can go into some of the background and credibility  
3 issues of the government's informants. That issue was fully  
4 briefed for the Court and fully ruled on by the Court and I  
5 just want to make sure before going into opening statements  
6 the defense will comply.

7 THE COURT: I already ruled on it.

8 MR. MARKS: The government has misconstrued my  
9 motion. I don't intend to say anything about the witnesses,  
10 about Alansi's credibility, his credibility. Your Honor has  
11 ruled that I cannot do that. I understand that.

12 What I did was to bring to the Court's attention  
13 cases showing that motive evidence is admissible where the  
14 defense is entrapment and I simply was alerting to the Court  
15 to the fact that I would like to go into his motive, the fact  
16 that he is making money, that he had a motive to entrap the  
17 defendants. It has nothing to do with credibility.

18 MS. MOORE: Your Honor, that was part of his  
19 response to the government's initial motion and we replied  
20 that the case law is that motive for terrorist organization is  
21 in fact irrelevant. The courts have found so. It was after  
22 briefing this issue that the Court made its ruling. The fine,  
23 how much he was paid, his bad acts, should not be gone into by  
24 the defense in openings or anywhere else.

25 MR. MARKS: I agree that bad acts, I agree about the

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1 fire. I don't intend to get into that. We are just talking  
2 about his financial motive.

3 MS. MOORE: The fact he was paid is already going to  
4 come out. How much, as we briefed thoroughly, is not  
5 relevant.

6 THE COURT: Don't go into that.

7 MR. MARKS: Don't go into how much?

8 THE COURT: Don't go into it.

9 MR. MARKS: I can go into the fact that he was paid.

10 THE COURT: Yes.

11 I'm going to seal Court Exhibit 1 and we'll seal  
12 those documents. We'll seal the medical note.

13 MR. GOODMAN: The newspaper article is public,  
14 right?

15 THE COURT: Yes.

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3 THE COURT: Bring the jury in, Augie.

4 (Jury in at 9:55 a.m.)

5 THE COURT: Make the adjustments, Augie.

THE CLERK: Alternate one, sit in the five spot.

7 Alternate two, right up there, the seventh spot. You can  
8 shift over and the other two can come down.

9 THE COURT: Now we will swear you in.

10 (Jury sworn.)

11                   THE COURT: Ladies and gentlemen, what is going to  
12 happen is we have what they call openings. And an opening is  
13 what the government is going to tell you that they intend to  
14 prove, what the case is all about. You will be hearing it for  
15 the first time. I will be hearing it for the first time.  
16 They figure that their opening statements will be 30 to 40  
17 minutes.

18 As I said before, in our system of justice,  
19 defendants don't have to do anything. They can remain mute.  
20 However, it's my understanding that the defendants are going  
21 to make an opening statement.

22 Mr. Goodman, you will also be 30 or 40 minutes?

23 MR. GOODMAN: I had estimated 45 but I'll try to  
24 pare it down a little bit from that, something like that.

25 MR. MARKS: About 40 minutes, your Honor.

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1               THE COURT: Who is making the opening statement for  
2 the government?

3               MS. MOORE: I am, your Honor.

4               THE COURT: All right.

5               May it please the Court, counsel, members of the  
6 jury, in January of 2003, four men including these defendants  
7 met in a hotel room in Frankfurt Germany and talked about  
8 funneling millions of dollars to two of the world's most  
9 vicious terrorist organizations, Al-Qaeda and Hamas.

10              The two defendants Sheikh Mohammed Al-Moayad and his  
11 assistant Mohammed Zayed came to those meetings in Frankfurt  
12 from Yemen. The other two men came from Brooklyn.

13              And over the course of four days in Frankfurt, the  
14 four of them talked about their mutual commitment to Jihad, or  
15 the Islamic holy war. They talked about the need to support  
16 the fighters of the Jihad or the Mujahidin fighters with  
17 weapons, equipment, training. They talked about supporting Al  
18 Qaeda and Hamas. They talked about using codes to discuss  
19 these topics and they talked about the use of charities to  
20 disguise money that was really going to terrorist  
21 organizations. And at the defendant Moayad's request, they  
22 placed their hand on the Koran to swear an oath of secrecy to  
23 keep their discussions confidential, leaving no doubt that  
24 Jihad was a field that he had been involved in for many years,  
25 the defendant Moayad, who called himself Osama Bin Ladin's

## Opening Statement/Government/Moore

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1 sheikh, bragged about association with other known terrorists  
2 including the secretary general of Hamas. At the conclusion  
3 of four days of meetings, the defendant agreed to transfer  
4 millions of dollars to Al-Qaeda and Hamas. And the defendant  
5 Moayad closed their meetings with a prayer and this was his  
6 prayer. "Dear God, defeat the Jews, the tyrants, defeat the  
7 infidel Americans. Dear God, strike them with earthquakes.  
8 Put them in their coffins.

9 The defendant Zayed, the Sheikh's assistant, was far  
10 more cautious during those meetings. He was surveillance  
11 conscious. He was concerned about recording devices, at times  
12 noting that he thought a telephone and a pager were too close,  
13 obviously thinking they could record the conversations. He  
14 spoke rarely, and when he did, he did so in low tones. And he  
15 encouraged the others to be quiet when they swore on the  
16 Koran, discuss this topic quietly. He was right to be worried  
17 because these conversations in Frankfurt were being recorded  
18 by German law enforcement officials at the request of the FBI.  
19 And the other two men in those meetings who had come from New  
20 York were informants working for the FBI. One of them was a  
21 Yemeni man who had known the defendant from Yemen.

22 The other was an American Moslem who converted to  
23 Islam in prison and who for purposes of the meeting in  
24 Frankfurt was playing the role of a terrorist financier with  
25 millions of dollars to spend.

## Opening Statement/Government/Moore

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1           What the defendants didn't know, what the defendants  
2 couldn't have known is that they were committing the crimes  
3 they are charged with in this Court on tape. And as a result,  
4 those tapes, hours and hours of them will be the evidence you  
5 will be seeing and hearing at this trial. You won't have to  
6 rely on the recollections of witnesses trying to piece  
7 together what happened two years ago in Frankfurt. You won't  
8 be seeing piles of documents. You will be seeing videotapes  
9 of the actual crimes being committed as though you were in  
10 those very hotel rooms.

11           The defendants are charged in this case with  
12 conspiring and attempting to provide material support to  
13 foreign terrorist organizations. Additionally, the defendant  
14 Moayad was charged with actually providing support to  
15 terrorist organizations.

16           Material support as used in that law is exactly what  
17 it sounds like, it includes money, weapons, personnel,  
18 equipment, anything that can be used to support a terrorist  
19 organization. And the two foreign terrorist organizations in  
20 question are Al-Qaeda and Hamas.

21           Both of those terrorist organizations are offshoots  
22 of an old Jihadist organization, the Muslim brotherhood, and  
23 they share an ideology grounded in radical Fundamentalist  
24 Islamic thought. That ideology centers on expelling all  
25 influence of non-Muslims or infidels from the Muslim holy

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1      1lands and unifying all Moslems under a pure Islamic state that  
2      controls all religious and political aspects of society under  
3      its rule, like the Taliban in Afghanistan.

4                This is the goal, and the means of achieving it is a  
5      combination of terrorism and terrorist acts and building grass  
6      roots support for extremist Islamic thought in current and  
7      future generations through education charitable works and  
8      religious indoctrination. And while both Al-Qaeda and Hamas  
9      share this fundamental outlook, there are differences.

10                Hamas was formed in 1987 and focuses on Israel and  
11      the Palestinian territories.

12                As a result, Hamas' terrorist attacks are mostly in  
13      Israel and mostly in the form of suicide bombings in public  
14      areas.

15                Al-Qaeda, which was formed in the late  
16      '80s and early '90s under Bin Laden's leadership, takes a  
17      broader approach. While the ideology and tactics are similar,  
18      Al-Qaeda's worldwide outlook has it sending and training  
19      Mujahidin fighters to fight Jihad in Muslim conflicts all over  
20      the world, including Bosnia, Chechnya, Afghanistan, Kashmir  
21      and Somalia.

22                Al-Qaeda's terrorist attacks are also on a more  
23      global scale and often aimed at America, from the bombing of  
24      U.S. embassies in Africa to the attacks on the USS COLE in  
25      Yemen, to the September 11th attacks. Al-Qaeda sees the

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1      United States as the ultimate enemy of Islam and has vowed to  
2      destroy this country.

3               It goes without saying why supporting these  
4      terrorist organizations with money, weapons, recruits or any  
5      other material support is a crime.

6               So let me turn to how it is we are going to prove  
7      the defendants committed these crimes

8               First, you will hear about the outstanding  
9      international cooperation that the FBI received from German  
10     Bundeskriminalant in conducting the undercover operation that  
11    took place in Frankfurt between January 7 and January 10,  
12    2003. German agents will describe the extensive preparations  
13    they made to conduct physical and electronic surveillance of  
14    the defendants while they were in Frankfurt. They received  
15    court authorization to bug the defendants and the informants'  
16    hotel rooms, to wiretap the defendants' cell phones and hotel  
17    phones, and to bug the rental car that the defendants and  
18    informants used briefly during this trip. The hotel rooms  
19    were also equipped with video recording machines and videos of  
20    the meetings were recorded.

21               Additionally, agents were assigned to conduct  
22    24-hour surveillance of the defendants whenever they left  
23    their hotel rooms. Thanks to those efforts, you will see and  
24    hear many hours of audio and video recordings of the Frankfurt  
25    conversations. The defendants spoke in Arabic during those

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1 meetings so you will also receive transcripts with  
2 translations of the Arabic conversations. And after we play  
3 the videos, we will read those translations out loud during  
4 this trial.

5 Those videos and audio recordings will provide a  
6 detailed account of what happened in Germany between January 7  
7 and January 10, 2003.

8 And while I can't possibly describe everything that  
9 was said and transpired during those many hours of meetings, I  
10 will try to give you a brief overview, day by day, starting  
11 with the day that the defendants arrived in Frankfurt,  
12 January 7, 2003.

13 The defendants arrived in the early morning on  
14 January 7 and were met at the airport by the Yemeni informant  
15 who helped check them into the hotel and showed them to their  
16 rooms. You will see a short video from inside their hotel  
17 room on the morning of January 7 when the defendants first  
18 entered that room and are shown around the room by the Yemeni  
19 informant

20 In that first video, you'll see that from the very  
21 first moment, the defendant Moayad was concerned about  
22 eavesdropping devices that could be in the room. The Yemeni  
23 informant started to say that he had met the American at the  
24 Al Farook mosque in Brooklyn and the defendant Moayad cut him  
25 off, signaling with his hands to his ears as though wires were



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1 coming out of his ears, that he was worried they were being  
2 overheard.

3 A few hours later on that first day at around  
4 1:00 p.m., during a short video from that same hotel room,  
5 you'll see the Yemeni informant bring the American to the room  
6 to introduce him to the defendants for the first time. This  
7 introductory meeting is only about five minutes long.

8 Later that evening the informants took the  
9 defendants to dinner in the rented Mercedes which was also  
10 wired for sound, to and from the public restaurant at which  
11 they eight that night

12 With introductions made and some time spent together  
13 at dinner, the groundwork was laid for a substantive meeting  
14 to take place the next day, January 8.

15 The American started the meeting by reciting versus  
16 from the Koran that refer to Jihad and explained he had done  
17 so because that was what their business in Frankfurt was  
18 about. He explained his background, that he had been fighting  
19 the American system and the American government since the  
20 seventies as a member of the Black Panther party, that he  
21 considered America and anyone who supports America against the  
22 Moslems to be his enemy. The defendant Moayad said he was  
23 doing the same from Yemen, he was in the same field

24 During this meeting the defendant Moayad started to  
25 let his guard down. When asked directly, he revealed his past

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1 association with Bin Laden, how he'd met with him and provided  
2 him with financial support, and taught him the Islamic laws.  
3 As the defendant, who is apparently on a first name basis with  
4 Bin Laden put it, I am more aware than Osama with the Islamic  
5 laws, I used to teach him the Islamic laws

6 When Moayad talked this freely, his codefendant  
7 Zayed became visibly nervous and started shifting and  
8 squirming in his chair and kept saying "in the '80s, in the  
9 '80s, trying to distance his boss from Bin Laden.

10 Throughout this conversation, Zayed was ill at ease,  
11 speaking only rarely, like when the defendant Moayad  
12 momentarily drew a blank on the name of the Hamas guy he'd met  
13 with two months earlier in Syria, and turned to Zayed, his  
14 trusted assistant and confidant who loyally provided the name  
15 Khalid Meshal.

16 Who is Khaled Meshal? You will learn that Khaled  
17 Meshal is the leader of Hamas. The defendant Moayad explained  
18 during the January 8 meeting that he and Meshal visit each  
19 other regularly in Yemen and Syria.

20 With the defendant Moayad apparently somewhat  
21 comfortable talking about his connections to terrorists, the  
22 American explained that what he wanted was to support the  
23 Mujahidins, the men fighting the Jihad, with equipment,  
24 weapons and better training. During this conversation, the  
25 defendant Moayad mentioned a charity with which he was

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1 involved and emphasized the need to support the families of  
2 the martyrs who had died and whose families come to him for  
3 charitable support.

4 The American said he did not mind contributing to  
5 the charity and the martyrs' families, but he wanted to know  
6 that the rest of the money would go toward supporting the  
7 Mujahidin with weapons, equipment and training. The defendant  
8 Moayad replied: "I will work in these fields, as they are my  
9 fields." He pointed out to the American that it could be  
10 difficult to arrange training for Mujahidin fighters in Yemen  
11 because recent arrests made it necessary to tread lightly in  
12 Yemen. But he was quick to add that it would be possible in  
13 Palestine. He said: In Palestine it's possible, regarding  
14 training in Palestine, I can call Hamas and arrange things  
15 with them and with you. For the remainder of the meeting, he  
16 made numerous similar comments about his strong ties and  
17 connections to Hamas. As their conversation obviously turned  
18 to their mutual plans to support terrorist organizations, the  
19 defendant Moayad, a cleric, had everyone place their hands on  
20 the Koran and swear an oath of secrecy, the oath they swore  
21 was that their meeting was based on honesty and secrecy, that  
22 they would not lie to one another and that they would do their  
23 best

24 Before this meeting ended, they would come up with a  
25 code for their communications and some of the ways money could

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1   be transferred from Brooklyn to Yemen. It was agreed that  
2   the Yemeni informant would come by later to discuss codes with  
3   the defendants.

4                 Before the Yemeni informant came by that evening for  
5   that discussion regarding codes, the defendant had a private  
6   conversation regarding codes and the defendant Moayad  
7   explained to his codefendant how to use codes and gave him  
8   some examples like using the word corn when you really mean  
9   ammunition.

10               Later on when the Yemeni informant came by, they  
11   spelled it out in greater detail agreeing that orphans,  
12   elderly, educating women, would all be codes. Money sent  
13   under those labels would really be going to terrorism.

14               They met with the American again the next day. With  
15   an agreement to support terrorists and terrorist organizations  
16   in principal established the previous day, the American  
17   informant, at the FBI's direction, used the meeting on  
18   January 9 to seek clarification on a couple of issues.

19               He started this meeting off by saying he wanted more  
20   details regarding the training of the Mujahidin. The  
21   defendant Moayad instantly cut him off and instructed  
22   the Yemeni informant to tell the American to use a different  
23   word, that is to speak in code. They had discussed this the  
24   night before and established words to use as code. The Yemeni  
25   informant explained that the codes would be used for future

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1     communications, but for now, the American just wanted to be  
2     clear, so there would be no misunderstandings.

3                 With the express understanding that they would not  
4     speak in codes, the first thing the American sought to have  
5     clarified was where his money would be going

6                 The question put to Moayad was: Is it going to  
7     Hamas only? Is the focus on it? Or is it going to other  
8     things, either Al-Qaeda or any other organization that you  
9     will deal with? The defendant Moayad replied: The way we see  
10   it is to support all in Islam, in Jihad, Hamas, Al-Qaeda,  
11   prisoners, Mujahidin, and such, anyone we know of who is in  
12   the Jihad field.

13                The American wanted clarification on some other  
14   points as well. He wanted to know exactly what the defendant  
15   Zayed's role in all this was. He said he hadn't wanted to be  
16   rude the day before, after all, they had all taken an oath on  
17   the Koran, but he wanted some explanation of Zayed's presence  
18   at the meetings. The defendant Moayad explained that his  
19   assistant Zayed was the best person he has, he's aware of  
20   everything I do, big and small, Moayad explained. The  
21   defendant Zayed had sworn an oath of loyalty to Sheikh Al  
22   Moayad and if anything happened to Moayad, the defendant Zayed  
23   would make sure that the money got to its intended recipients

24                Next, the American wanted an explanation of some  
25   receipts that on their face appeared to be receipts for

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1 charity organizations. Going through those receipts, the  
2 defendant Moayad explained that those charity organizations  
3 were really front organizations for terrorist organizations.  
4 As he put it, this one we deliver to Hamas, this one we  
5 deliver to the inside, this one we deliver to the martyrs.  
6 The martyrs, of course, are the men who die in suicide attacks  
7 or fighting Jihad.

8 In the middle of their conversation about these  
9 receipts, the hotel room service came in. When that happened,  
10 the defendant Moayad instantly flipped the charity receipts  
11 upside down on the table and instructed the Yemeni informant  
12 that when someone comes in, they shouldn't stop talking, but  
13 just change the topic to the Koran. Of course, if those had  
14 been normal receipts for real charts, there would have been no  
15 need to him them from room service or to change the subject.  
16 But they weren't. As the defendant Moayad explained, those  
17 were charities that are used to disguise money going to  
18 terrorism.

19 With the charity receipts explained, the  
20 conversation turned to percentages of how the money should be  
21 divided up. The defendant Moayad wanted 30 percent for his  
22 charity and the American said five percent. Eventually they  
23 agreed that the defendants would spend 10 percent on charity  
24 and the other 90 percent would go to terrorist organizations,  
25 training the Mujahidin fighters, the militant Jihad.

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1                 The meeting on January 9 concluded with some  
2 discussion of providing the American with names of Hamas  
3 contacts in Brooklyn and generally how they could go about  
4 transferring money from the United States to the defendants in  
5 Yemen. They agreed to meet a final time the next day.

6                 January 10th was the last day. Early that morning  
7 the defendants talked alone in their hotel room. They talked  
8 about how they wanted to spend the American's money in the  
9 field of Jihad, how they wanted to use it to train the young  
10 Mujahidin that were already in Yemen, some of whom had  
11 returned from Afghanistan. The defendant Moayad explained to  
12 Zayed that they would turn to those they know to help train  
13 the Mujahidin: We tell them that we want to prepare them. We  
14 have ready young men who are ready in some aspects but are  
15 weak in others. Prepare them for us. We have young men who  
16 are ready for Jihad.

17                 Later that morning they had their final meeting with  
18 the American. He gave them a checkbook with blank checks for  
19 them to cash in Yemen as they spent the money on terrorism and  
20 this meeting concluded with the defendant Moayad's call to  
21 God to put the Jews and Americans in their coffins.

22                 Shortly thereafter, the defendants were arrested.  
23 Obviously, the videotapes and recordings of those  
24 conversations will be the evidence you will be seeing during  
25 the trial.

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1            You will also hear from a number of witnesses and  
2 see documentary evidence. You will hear from Special Agent  
3 Brian Murphy about his year long investigation that led up to  
4 the undercover operation in Frankfurt and the instructions and  
5 directions that he gave the informants during that time  
6 period.

7            Agent Murphy will tell you that initially his  
8 investigation led him to focus on a number of men right here  
9 in Brooklyn.

10           Those names and telephone numbers were in the  
11 defendant Moayad's phone book when he was arrested. In the  
12 Frankfurt videos and his post-arrest statement, the defendant  
13 Moayad talked about how he had sent the Yemeni informant to  
14 see them about assisting in transferring money from Brooklyn  
15 to Yemen.

16           In his post-arrest statement, the defendant Moayad  
17 specifically stated that one of those men had helped raise  
18 money for him at the Al Farook Mosque here in Brooklyn and had  
19 sent him 500 to \$1,000 a month from those collections for  
20 several years.

21           Agent Murphy will tell you about a telephone  
22 conversation he taped between the Yemeni informant and the  
23 defendant Moayad in August 2002, several months before the  
24 Frankfurt meetings. And

25           And you'll see a transcript of that conversation

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1 during which the defendant Moayad invited the Yemeni informant  
2 to a mass wedding he hosted on September 19, 2002 in Yemen.

3                 In his post-arrest statement, the defendant Moayad  
4 explained that he had arranged the wedding and that it was  
5 sponsored by his mosque. In his post-arrest statement, the  
6 defendant Moayad admitted that a Hamas delegate attended the  
7 wedding.

8                 In the Frankfurt video tapes, you will see and hear  
9 the defendants talk about the group wedding and how that  
10 spokesman for Hamas gave a speech during which he noted the  
11 coordinated timing of the wedding with a suicide attack in  
12 Israel that day.

13                 In the Frankfurt tapes, you will see the defendants  
14 laugh and smile when they talk about it and you will see the  
15 defendant Moayad clap when talking about how a suicide attack  
16 was scheduled to coincide with his mass wedding.

17                 You will hear the defendant Moayad say it was two  
18 weddings in one. You will learn that the word wedding is  
19 often used by terrorists to mean suicide attack, and you will  
20 hear the defendant Zayed say God willing, the next wedding  
21 will be a cheerful event for Islam in its entirety. You will  
22 learn that there was a terrorist attack in Israel that day.

23                 And at this trial you will hear from Gideon Black, a  
24 20 year old Scottish law student. On September 19, 2002,  
25 Gideon Black was with his cousin in Israel on their way to

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1 visit his father for a holiday. They were on the number 4 bus  
2 in Tel Aviv when the Hamas suicide bomber got on it and blew  
3 it up.

4 Gideon Black survived that attack and was able to  
5 get off the bus. But he stayed on when he realized that his  
6 cousin wasn't with him. As he knelt beside his best friend  
7 and watched the life begin to pour out of him from a head  
8 wound, Gideon Black began to cry. He will tell you from that  
9 witness stand that what happened on that bus on September 19,  
10 2002 was nothing to celebrate. It wasn't anything to cheer or  
11 clap about. It shouldn't have made anybody happy. So when  
12 you see the defendants in the Frankfurt hotel room laughing  
13 and cheering and clapping and reminiscing about the  
14 announcement of that attack at their group wedding --

15 MR. GOODMAN: Your Honor, I'm sorry, your Honor.

16 THE COURT: You're argumentative.

17 It's an opening.

18 MS. MOORE: I'm describing what they are going to  
19 see in the Frankfurt videotapes, your Honor.

20 THE COURT: All right.

21 MS. MOORE: When you see them clapping and cheering  
22 and reminiscing about the announcement of that attack at their  
23 group wedding, think of Gideon Black and the testimony you'll  
24 be hearing from him.

25 Hamas' connections to terrorism and terrorist

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1 attacks is not an abstract, remote concept. It's real, with  
2 very real human consequences and the Frankfurt videos make it  
3 crystal clear that these defendants know what supporting Hamas  
4 is really all about.

5 Among some of the physical evidence you will see at  
6 this trial is the defendant Moayad's own address book that was  
7 seized in Germany after his arrest and reads like a Who's Who  
8 in the world of terrorists and terrorist organizations.

9 It includes numbers for Abdulkazeed Zindani, who you  
10 will learn is a designated terrorist and friend of Osama Bin  
11 Laden; Mohamed Siam, the spokesman for Hamas in Yemen, the  
12 Al-Aqsa Foundation below which the defendant wrote Hamas  
13 office; and the Haramain Organization, the leading Al-Qaeda  
14 front charity organization that was jointly shut down by the  
15 United States and Saudi, Arabia.

16 Finally, you will hear about the defendants'  
17 post-arrest statements during which they put forth a series of  
18 inconsistent defenses and false exculpatory statements.

19 Right after his arrest in Germany, the defendant  
20 Zayed was interviewed by German officials and he made a number  
21 of false denials, but ultimately admitted that in the talks in  
22 the hotel in Germany, it was agreed that 10 percent of the  
23 money would go to charity and 90 percent would go to Hamas and  
24 Jihad.

25 10 months later during his extradition to the United

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1 States, he changed his story completely, claiming he knew  
2 nothing and had been told nothing about Jihad and terrorism  
3 and believed that the conversations in Germany were all about  
4 supporting charities. And when the agents confronted him with  
5 the fact that those conversations about Jihad and terrorism  
6 were on videotape and audio tape, he said that he must have  
7 been in the bathroom during those parts of the conversation.  
8 You will see very clearly from the videotapes that the  
9 defendant Zayed was not in the bathroom once during any of the  
10 discussions in Frankfurt.

11 Moving away from the bathroom defense, the defendant  
12 Zayed next claimed during this interview that every time Jihad  
13 or Hamas were mentioned, he said all the money should go to  
14 charity and he said so in the hotel rooms.

15 When he was told by the agents that the tapes did  
16 not reflect that, he said, "I will die for Allah before I  
17 cooperate with you."

18 The defendant Moayad didn't do much better. He also  
19 made a number of post-arrest statements, some of which are  
20 patently absurd and others which are contradictory.

21 Let me start with the patently absurd. While in  
22 Germany awaiting extradition to the United States, the  
23 defendant Moayad prepared a written statement to be given to  
24 the press. In it he claimed that when he first arrived in  
25 Frankfurt, the hotel was full of armed soldiers, one of whom

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1 pointed a gun in his face. Moayad went on to explain that as  
2 a result, he was in a terrified state the entire time he met  
3 with the American. Several months later while interviewed by  
4 the FBI, Moayad stuck to this story, saying that immediately  
5 upon landing in Frankfurt, a soldier had stuck a gun in his  
6 face and after that, he just wanted to leave Germany safely  
7 and would have agreed to anything. You will hear from German  
8 surveillance agents who observed the defendant from the moment  
9 he landed in Frankfurt through his check-in at the hotel and  
10 no one pointed a gun at him.

11 You will see a picture of the lobby of the Sheraton  
12 Hotel in Frankfurt, a nice business hotel, and know that the  
13 idea that it would have been full of German soldiers when the  
14 defendant arrived there is ridiculous.

15 The defendant Moayad also said that in the hotel  
16 rooms in Frankfurt the Yemeni informant told him that the  
17 American informant is crazy and he should just go along with  
18 whatever he said to get the money. But you'll see that that's  
19 not what happened at all. Even in private conversations just  
20 between the defendants, they are talking about their true  
21 plans to provide material support to Al-Qaeda, Hamas and  
22 Mujahidin fighters.

23 In their private conversations, they are talking  
24 about sending young men to training camps. There was no  
25 elaborate ruse by the defendants to just say what the American

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1 wanted to hear in his presence to get the money. They were  
2 making real plans to spend his money on terrorism when they  
3 were alone in their hotel room.

4 Moayad's various attempts to explain away his ties  
5 to Bin Laden also varied wildly in these post-arrest  
6 statements. In the prepared written statement to the press he  
7 said that he never gave Bin Laden a single dollar and only saw  
8 him once in a public place in Pakistan. When interviewed by  
9 the FBI, the defendant said he had given money to both Bin  
10 Laden and Al-Qaeda but could not remember the timeframe. He  
11 went on to explain that he no longer supported Bin Laden  
12 because he and Bin Laden had had a disagreement after which  
13 Bin Laden issued a fatwa calling for the defendant Moayad's  
14 death.

15 The defendant Moayad stated in his FBI interview,  
16 that he would never support any organization that killed  
17 Americans. He started that same interview with the following  
18 statement that he made in English: "Allah is with me. I am  
19 Mohammed Al Moayad. Allah will bring storms to Germany and  
20 America."

21 And the defendant who told the FBI that he would  
22 never support any organization that would kill Americans  
23 concluded his written statement to the Yemeni press with the  
24 following: "Warn the American side it is not in their benefit  
25 to make enemies of all people's; they will not be safe, even

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1 if revenge is late in coming, even if it takes generations,  
2 god has destroyed many countless nations before them, and he  
3 most certainly will revenge us."

4 I could go on much longer talking about all the  
5 additional inconsistent and blatantly false statements made by  
6 the defendants in their post-arrest statements, and there were  
7 many, but the bottom line is when you commit the crime on  
8 videotape, there's no way to talk yourself out of it.

9 Ladies and gentlemen, that in a nutshell is what  
10 this case is about and the evidence you will be seeing and  
11 hearing. But before I sit down, let me just make one more  
12 point.

13 A lot of those conversations between the defendants  
14 and the Yemeni informant are in Arabic so we're going to ask  
15 for your patience in watching the videos.

16 We will offer and read the translations of those  
17 conversations but it's still important for you to watch the  
18 videos. It's important for you to see the defendant's body  
19 language, their gestures and if nothing else, to see that the  
20 defendant Zayed was not in the bathroom the entire time they  
21 were talking about Jihad.

22 Finally, let me introduce myself and the people at  
23 this table. My name is Kelly Moore. I'm an assistant United  
24 States Attorney here in Brooklyn.

25 Seated at the government's table with me are

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1 Assistant United States Attorney Pamela Chen, Jeffrey Knox,  
2 Special Agent Brian Murphy of the FBI and Detective John White  
3 of the NYPD.

4 Together we'll be presenting this case to you on  
5 behalf of the United States. At the end of this trial we'll  
6 have the opportunity to address you again. At that time we  
7 will review all of the evidence you will have seen and at that  
8 time we will ask you to return the only verdict that is  
9 consistent with the evidence in this case and that is that the  
10 defendants Sheikh Al-Moayad and Mohammed Zayed are guilty as  
11 charged.

12 MR. GOODMAN: Before I proceed, I'd like a sidebar,  
13 your Honor.

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3 MR. GOODMAN: I move for a mistrial, your Honor.  
4 Ms. Moore referred to evidence which the Court excluded on  
5 defendant's motion in limine to exclude the evidence of the  
6 wedding tape. There is nothing in the transcript which  
7 describes what happened. There are general reference to the  
8 wedding but nothing which described the wedding in the detail  
9 that Ms. Moore discussed in her opening statement to this  
10 jury.

I believe that she transgressed this Court's order.

12 MR. MARKS: I joint in that. I would like to state  
13 another ground for the motion for mistrial. That is Ms. Moore  
14 with her voice cracking, pointed to the witness stand and said  
15 that a victim of a terrorist attack in Tel Aviv was going to  
16 testify. It was a highly emotional moment. It has nothing  
17 whatsoever to do with this case. There is no suggestion at  
18 all that the defendant in any way -- the defendants had  
19 anything to do with that terrorist attack.

20 MS. MOORE: Your Honor, the motion by the defendants  
21 was to suppress the video of the actual wedding. I was  
22 extremely careful in my opening statement to refer to the  
23 defendant Moayad's post-arrest statements to refer to another  
24 taped conversation in which he invited the Yemeni informant to  
25 that wedding and to which he referred to the Frankfurt tapes

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1 in which the Hamas representative's speech was discussed.

2                 None of that evidence has been excluded by the  
3 Court. The Court has only at this point excluded the actual  
4 videotape of the Hamas representative speaking and I did not  
5 refer to it. I was extremely careful. Furthermore, with  
6 respect to the statement that they are not charged with  
7 terrorist acts, that is correct, however, the government has  
8 to prove that these defendants either knew that these  
9 organizations are designated, which we can't prove in all  
10 likelihood, we can't prove; or that the defendants knew that  
11 they were terrorist organizations.

12                 The Frankfurt videotape in which they are talking  
13 about how a Hamas representative announced the suicide attack  
14 clearly shows these defendants know that Hamas is a terrorist  
15 organization.

16                 My opening was entirely appropriate.

17                 THE COURT: I'm going to deny the motion and I am  
18 also going to caution the jury that anything lawyers say is  
19 not evidence. I will say that after each statement by the  
20 lawyers.

21                 (End of discussion at sidebar.)

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1               THE COURT: Ladies and gentlemen, I think I told you  
2 before but I'll reiterate it. Sometimes we have what they  
3 call sidebars and the lawyers and I will be discussing matters  
4 of law. That is not relevant for your ears. Notwithstanding  
5 whatever we discuss in this trial, it is being taken down by  
6 the court reporter him or herself.

7               I will also admonish you remember what I said. This  
8 case will be decided by evidence, and evidence I'll explain to  
9 you later on will be the sworn testimony of witnesses.

10              For that reason, whatever the lawyers say, whatever  
11 the prosecutor says is not evidence in this case. The opening  
12 was the government's position as to what the case is all about  
13 and what they intend to prove. Whatever defense counsel says  
14 is not evidence. His opening will be what the case is about  
15 or what the case is not about. That is his version.

16              Remember, evidence is sworn testimony, not the  
17 questions of the lawyers but the answer by the witnesses and  
18 whatever exhibits I choose to admit. And even what I say is  
19 not evidence.

20              Mr. Goodman.

21              MR. GOODMAN: Yes, your Honor.

22              THE COURT: I'm sorry.

23              MR. GOODMAN: That is okay. You are forgetful for  
24 names but I remember yours.

25              Good morning, jury. My name is Bill Goodman. I am

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1 one of the lawyers representing Sheikh Mohammed Al-Moayad who  
2 is a defendant in this case and for whom I will be speaking  
3 this morning here in Court. With me working in this case is  
4 cocounsel Lamis Deek and another cocounsel who unfortunately  
5 cannot be here today due to -- he would be here if he could at  
6 all possible. He has very -- things have kept him away. His  
7 name is Howard Jacobs and he will be here starting next  
8 Tuesday.

9 Now, the evidence in this case, as the judge said,  
10 what I say is not evidence and what Ms. Moore said is not  
11 evidence. But one thing that the evidence will clearly  
12 demonstrate is that this ailing, vulnerable man who has  
13 devoted all his life to charities in Yemen was lured to the  
14 United States by the United States government with promises of  
15 money for his charities and medical treatment which is  
16 absolutely critical in a country like Yemen. Medical  
17 treatment in German which he desperately needed and from the  
18 first to the last, these promises were held over him and it  
19 was made clear to him that he was not going to get what he  
20 wanted which was help for his charities and medical attention  
21 and what he so badly needed until he said the words that they  
22 wanted him to hear. The evidence in this case will show that  
23 this was an unfair, a coercive situation which was manipulated  
24 by the government to arrest this man and charge him with these  
25 crimes.

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1                   The evidence you will be seeing, and it was  
2 described somewhat by Ms. Moore, the videotapes and the  
3 transcripts, these things were meticulously staged by the  
4 United States Government. These conversations were recorded,  
5 both audio and video and this production that -- what was  
6 produced over these four days had actors, it had directors, it  
7 had sound technicians and in end, what they produced was  
8 essentially a show, akin to what might be called a TV reality  
9 show. You find two guys living in some remote place in the  
10 world, someone wants to give them money, you tell them, you  
11 send them plane tickets, you lure them to a very distant place  
12 where they don't speak the language and keep them in a hotel  
13 room for four straight days in a foreign country, you dangle  
14 huge amounts of money for them, huge amounts of money in front  
15 of them, and after days of pressure, after days of pressure,  
16 that they say the name of the so-called illegal organization,  
17 in this case it was Hamas, and say that they will give Hamas  
18 some money. And then you say all right, that is the deal and  
19 finally at the end, the payoff of the reality TV show is the  
20 police rush in and everybody is arrested.

21                  Let me first of all start with the cast of  
22 characters from this television show.

23                  Allan By the way, this is Sarah Burns who will be  
24 working with us throughout the trial who is a paralegal who  
25 works closely with me. You are going to see transcripts with

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1 these initials on them.

2                 And so these are the 4 important people in this  
3 production, SM is Sheikh Al-Moayad to whom I just introduced  
4 you. MZ is Mohammed Zayed who is the codefendant in this case  
5 who is sitting at the table also. CI-1, this means  
6 confidential informant number 1, this is a gentleman named  
7 Mohammed Alansi. He is like the play producer in this whole  
8 thing, he is the pivotal person.

9                 He speaks Arabic, he speak English, he is the one  
10 that is translating back and forth. If anyone follows  
11 basketball, he is the point guard. And CI-2, that is Schafer,  
12 so-called Schafer, Sharif Ziad, he is the wealthy American who  
13 they used to lure these guys to Germany who was going to give  
14 a lot of money for the charities. That is the cast of  
15 characters.

16                 In the end, as the government has told you,  
17 basically the only evidence in this case, everything that the  
18 government relies on to prove these so-called crimes by these  
19 men, my client in particular, it consists of recorded  
20 conversations that took place over a period of four days in  
21 two hotel rooms in Frankfurt Germany. Keep in mind, first of  
22 all, that these conversations have been translated and you are  
23 going to be given part of the translations to look at in this  
24 case. The government has only translated a small percentage  
25 of these. There is a lot more that was said and there is a

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1    Lot more that was said that wasn't recorded in the hallways as  
2    they are traveling in certain points and when they are eating  
3    dinner together outside of the hotel. These conversations  
4    were not recorded. And things were said that we simply don't  
5    know. And I assure you, I don't think you will be hearing  
6    about them at any rate.

7                 These recordings contain serious mistranslations.  
8    The translations that you will see contain serious  
9    mistranslations of what was said. While the two confidential  
10   informants knew that the recordings were being made, the two  
11   defendants had no idea they were being made. And this is very  
12   important for two reasons. As you listen to the recordings,  
13   remember that the government agents were very aware that the  
14   microphones and cameras were on at all the times. The  
15   defendants were unaware that the conversation was being molded  
16   and pushed and punched in certain directions so that it would  
17   be recorded in those ways.

18                 These recordings involve a man, a man with a  
19   history, a man who comes from Yemen which is a remote part of  
20   the world. And the history that the government was well aware  
21   of, the history that -- the history of Sheikh Mohammed  
22   Al-Moayad is that he had devoted his entire life to helping  
23   other people, to do charitable work in Yemen. The only thing  
24   that the government really wants to talk about and focus on,  
25   the statements that these men made in this staged fish bowl

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1 environment in Germany.

2 And so will we talk about this as well. And the  
3 evidence will show that those four days, the four days that  
4 Ms. Moore described to you, show a very different story than  
5 what she described and told you. And these few days provide a  
6 fascinating story, but that is only part of the story. Let's  
7 start with Yemen which is another major part of this story.  
8 Yemen is a country in the Middle East. There is a story that  
9 goes with the old folk song, the Arkansas Traveler folk song,  
10 about a guy who pulls up in a car in front of a farmer and  
11 asks how do I get to Little Rock from here. And the farmer  
12 says; Mister, you can't get there from here. That is just  
13 about what Yemen is like. It's hard to get from anywhere to  
14 Yemen and from Yemen to anywhere. It's extremely poor and  
15 poverty is the key word when we are talking about Yemen. Of  
16 the hundreds of countries in the world, Yemen is amongst  
17 the 20 poorest nations in the world. The barest necessities  
18 of life in Yemen, clean water are unavailable. People die of  
19 infections as a result of having unsanitized water all the  
20 time. Education is nonexistent and holds the country back.  
21 There is rampant disease. There is no medical care. You get  
22 sick in Yemen, you are better off going to the grocery store  
23 than to the hospital for medical treatment. That's why anyone  
24 who needs medical treatment, if they can get out of Yemen,  
25 they go off to Germany for medical care. And there is an

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1 extremely low life expectancy. Yemen is also an extremely,  
2 extremely religious Islamic country. And it's a political  
3 democracy. There are two parties. The defendant Sheikh  
4 Al-Moayad is an important figure in one of those parties, the  
5 Isla party.

6 In Yemen, both the ruling party and the Isla party,  
7 which he is a member of and devoted to, he is the member of  
8 the executive committee, the central decision-making body of  
9 the Isla party, are aligned with the United States in the war  
10 against terrorism.

11 And in fact one of the leaders of the Isla party was  
12 invited to one of the political conventions held here in the  
13 United States this year. One of the key tenants of Islam is  
14 charity, the 5 pillars of Islam. One of the five, one of the  
15 things that you have to do is to engage in charitable work.  
16 And Sheik Moayad in Yemen runs a mosque there. He speaks at  
17 that mosque. He is a preacher at that mosque. And he also  
18 works at charity in that mosque. His single driving passion  
19 is charity and this comes through in the tapes that you are  
20 going to see.

21 You are going to hear it over and over again. He is  
22 interested in what? What he calls his bakery. His bakery is  
23 like a soup kitchen. It feeds the poor. They feed a thousand  
24 families a day at his bakery. And a family in Yemen doesn't  
25 mean just you and the wife or you and the husband and a couple

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1 of kids. It means you, it means your in-laws, it means your  
2 cousins, nephews, nieces, and all the rest of it. It performs  
3 a tremendous service in this poor country. He also, his  
4 charities run a medical clinic. And as I said, medicine is a  
5 dire problem there.

6 They conduct a school. And you hear him talk over  
7 and over and over again about training; and training is  
8 important, and how the students at the school need to be  
9 trained with computers and they need to become a part of the  
10 modern world. And it runs a well. Again, something that is a  
11 dire necessity in this country where clean water is very hard  
12 to come by. Sometime about five or six year ago Sheikh  
13 Al-Moayad came across a gentleman, Mr. Alansi, CI-1, who was a  
14 Yemeni living in America. And there are many Yemenis living  
15 in America, living in this community amongst us. And they go  
16 back and forth to Yemen, as people do have a tendency to do  
17 with regard to the old world. And they contribute money to  
18 these charities, the ones that I was talking about, because  
19 they are so important. And so they struck up an acquaintance  
20 and talked about the possibility of Mr. Alansi helping him.  
21 Some time passes and after that, Alansi contacts Sheikh  
22 Mohammed Al-Moayad and says I have somebody who is really  
23 interested -- and this is shortly before these meetings in  
24 2002 -- really interested in helping you out. He wants to  
25 meet with you. We'll pay for the plane tickets, we'll arrange

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1 for a hotel room. The Sheikh says make sure I can get some  
2 medical treatment there. He has serious diabetes, a chronic  
3 life-threatening disease at times. So he is going to go to  
4 Germany and Germany is a logical tempting place for Yemenis to  
5 go because as I said, many Yemenis when they seek medical care  
6 go to Germany.

7 The money that is talked about is money for the  
8 bakery, money for the schools, money for all these charities.  
9 After a series of telephone calls, some of which were  
10 recorded, and you'll see transcripts from some of it, the  
11 plans are made and Sheikh Al-Moayad and his trusted helper  
12 Mohammed Zayed travel to Germany to meet these gentlemen.

13 And they do meet. And Ms. Moore described what you  
14 are going to see and hear about these recordings. What  
15 happened. I want to talk a little bit about the transcripts  
16 and the recordings themselves. And what happened during these  
17 recordings and during these four days, as I said, is very  
18 different than what I believe she described.

19 First of all, during these recordings, as she said,  
20 there is a lot of conversation that takes place in Arabic and  
21 you are going to hear testimony during this trial about the  
22 nature, the way in which people in Yemen and in the Arabic  
23 world in general talk.

24 This is a culture in which you don't say no, you  
25 don't say get lost, you don't say you are a moron. You don't

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1 confront anything directly. Statements and conversations and  
2 suggestion are deflected.

3 For example, at some point in the conversation there  
4 is a discussion about the Koran and certain things are read  
5 and certain comments are made back and forth, back and forth.  
6 At the end, the Sheikh takes aside CI-1, Mr. Alansi, and says  
7 with regard to the other one, Sherif Zayed, tell him he has to  
8 work on studying the Koran. This is a polite way of saying  
9 your friend is a moron, I don't trust him, I have a problem  
10 with things that this gentleman is saying to me.

11 And that is the nature of the discourse, deflection.  
12 And this is particularly true when the person you are speaking  
13 to is your host and you are his guest and you are there at his  
14 will and he has paid for you to be there and you are in a  
15 country where you do not speak the language and you are  
16 basically stuck in this hotel room.

17 Now, because of the fact that this is an extremely  
18 religious society that these people come from and they are  
19 religious people, there is conversation constantly invoking  
20 the name of God, constantly saying God willing. I think the  
21 Arabic, and sometimes it's even used in the English  
22 translations, is intra-Allah, God willing. Constant reference  
23 of this sort and something that may be a little unusual or  
24 foreign to your ears. It doesn't mean these are unusual  
25 foreign people. These are ordinary people who are religious

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1 who come out of a different society.

2 You heard Ms. Moore constantly talk in her opening  
3 statements using the word Jihad, J-I-H-A-D. You see it in the  
4 newspapers all the time. And the understanding of what this  
5 word is and the way she was using it was this means armed  
6 militant struggle. Armed militant struggle. No. Jihad is a  
7 world that has wide meaning amongst religious people within  
8 Islam. And what it means is it means struggle. My Jihad this  
9 winter among other things is to lose weight. My Jihad is to  
10 learn something about the culture that my client comes from in  
11 Yemen. My Jihad is this trial. All of us have a Jihad. It  
12 may be to get closer to our children, to spend more time with  
13 our family, to worship or study more. And when it's used in  
14 the transcripts, it can mean one of a vast majority of things  
15 including armed struggle. It can mean that as well.  
16 Mujahadin, she used that word. And you'll hear that word.  
17 I'm a Mujahidin. That might mean I'm a soldier. It might  
18 also mean I'm a standup guy, I take responsibility for what I  
19 do. I take care of others. It can mean many things. We want  
20 our family, our friends, our students, our neighbors to be  
21 Mujahidin. We all want that.

22 So just keep in mind that every time the word Jihad  
23 is used, it's not always used the way the government would  
24 like to suggest that it is. It's not meant to be armed  
25 struggle. And sometimes it's used by Sharif Ziad, the fellow

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1 who did not speak Arabic, CI-2. He uses it only one way, he  
2 means terror. The Sheikh deflects him, and you will see it in  
3 the transcripts over and over again, my Jihad, he says. And  
4 I'm quoting from one part of the transcript my Jihad is my  
5 bakery. This Ms. Moore didn't mention but this is in there  
6 over and over again in one way or another. The other thing  
7 that you'll hear throughout this discourse is chronic  
8 references, references to the Koran, when I was a school kid,  
9 I learned it as the Koran. In these transcripts it's spelled  
10 I think this is more correct, Q'ran, Q'ran and chronic  
11 discourse. Here's what the Q'ran says, the holy book of  
12 Muslim people. Here's what the Q'ran says. There is a story  
13 that goes with this. There is something that sheds light on  
14 this, this discussion in which they are talking about he and  
15 Zayed in their room together, talking about so-called codes  
16 and corn and that kind of thing. That is a discussion about  
17 the Q'ran and talking about a story. It's perfectly obvious,  
18 and it's even in the government's transcripts that that is  
19 obvious that that is what it is.

20 Now, remember what I said originally. As you watch  
21 this evidence, as you watch these transcripts, the critical  
22 thing to keep in mind is that Sharif Ziad, CI-2 and CI-1 knew  
23 that they were being recorded and these two gentlemen did not.  
24 Basically this is a one-way mirror where the government knows  
25 what is being taped and the defendants don't.

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1           Take the talk, for example, about codes. Ms. Moore  
2 referred to it. Mr. Alansi, CI-1, comes in and talks to the  
3 two of them, says we are going to use codes, we are going to  
4 use this code and that code. This was shortly after the  
5 discussion in which the Sheikh said in effect, I think your  
6 friend there is a fool, he doesn't understand things. But I  
7 need money for the bakery. I need money for my charities  
8 badly.

9           And so he and CI-1 talk about using codes, not with  
10 two in the room, not with Sharif in the room, Ziad, but  
11 between themselves and they are talking about using it when  
12 they are in the presence of number 2 so that they can  
13 basically get money for the charities which is what he wants  
14 to happen.

15           What you see over and over again is two  
16 conversations happening. One between the two men in English  
17 and then one that is occurring in Arabic. And as you watch  
18 these and hear them, you are going to hear a lot of Arabic.  
19 Most of you, I assume, will not understand it. What you will  
20 understand is the English. What you got to remember is that  
21 the two defendants didn't understand a word of or very little  
22 of the English that was being said and this created a  
23 situation that was right for this translation by the key  
24 central figure in these discussions, Mr. Alansi, the point  
25 guard.

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1           Let me give you one example.

2           This is the discussion. This is just one of

3    thousands of discussions that occurred over these days but

4    here is a brief example. In English -- the English is

5    underlined -- CI-2, Mr. Ziad says, "the profit said the

6    refugees is one who gives up evil deeds and the Mujahidin is

7    one who fight with his passion. Here's how it's translated

8    into Arabic, Sheikh Al-Moayad. He says: From a hadid, which

9    is a commentary on the Q'ran of a statement of the profit

10   Mohammed; Allah's peace and blessings upon him about, about

11   the support of refugees and the needy for the sake of Allah,

12   meaning to support the needy for the sake of Allah. Then the

13   Sheikh, thinking that this is what was said in English says:

14   This is one of the obligations, tell him it's not out of our

15   goodness, God says it's an obligation, not a voluntary act,

16   it's an obligation and the duty on the part of each Muslim who

17   wants to appease God.

18           Remember what I said about the 5 pillars of Islam.

19   One guy is talking about fighting and the other guy is talking

20   about charity and religion and this is supposed to be a

21   conversation.

22           Now Ms. Moore told you what her overview of these

23   four days was. I want to tell you a little bit about mine.

24   One thing is clear. These four start out the -- these two

25   gentlemen from Yemen, Sheikh Al-Moayad and Mr. Zayed start out

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1 on the 7th, the first day of the meetings, very hopeful. They  
2 are hopeful and they are in good spirits and they think that  
3 they are going to get some support that they badly need for  
4 their charities and that the Sheikh, who is an older gentleman  
5 suffering from diabetes and asthma, is going to get some  
6 medical treatment. That's the way it starts out. And you  
7 will hear, you will see these conversations that happen on  
8 the 7th, the first day. Then they have a meeting on  
9 the second day, the 8th and in that meeting there is the  
10 conversation, because they know it's being taped, is focused  
11 in on what the -- what Ziad and Alansi, CI-1 and CI-2, want to  
12 talk about. So they tell say tell us about Osama Bin Laden.  
13 He doesn't bring it up. They say tell us what you know about  
14 him. I knew him in the 1980s says Sheikh Al-Moayad. I knew  
15 him back then. I sat with him, which means I met him. It was  
16 during the Russian war. It was during the war in Afghanistan.

17 I want to just stop here, and the evidence in this  
18 case will support this also, at that time the United States  
19 was an ally of Osama Bin Laden. The United States was funding  
20 Osama Bin Laden. The United States wanted him to fight and  
21 beat the Russians. So the idea that someone from the Muslim  
22 world from the country of Yemen might have met him and might  
23 have been supportive of what he was doing, fighting the  
24 Russians in Afghanistan, is hardly support for Al-Qaeda. And  
25 it becomes clear throughout these transcripts when the name

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1 comes up again; I knew him back then. After that, I cut off  
2 ties with him, he was distant from me. I disagreed with what  
3 he wanted.

4 And you will hear testimony in this case that the  
5 kind of trash talking, if I can use a common street expression  
6 from the United States, is Al Qaeda kind of speech that is  
7 never used by Sheikh Al-Moayad, it is used by the Americans in  
8 order to see if they can get him to say yes, I agree with it.  
9 And it is clear in the Arab world that if you speak one way,  
10 you are associated with Al-Qaeda and if you speak the other  
11 way, you are talking about unity and unifying. That is death  
12 to Al-Qaeda. They are out to get you if you talk like that.

13 Let me give you another example of this translation  
14 that makes the point very well.

15 Here is CI-2 talking. This is Ziad again, the  
16 American: But in my opinion as a converted Muslim is that my  
17 objective is to fight in the cause of Allah -- I can't say the  
18 Arabic so I won't try -- fight the cause of Allah, God All  
19 Mighty, and to liberate to the suffering Muslims who are  
20 actually under the yoke, all right, of the pig eating  
21 Christians, the infidels and the Unifacoons. I think that  
22 means hypocrites. This is trash talk. Clear what it is.  
23 CI-1, Alansi, translates this now, but does he talk trash  
24 talk? Because he knows what Al-Moayad is going to react to  
25 trash talk. He says, CI-1 says, he says he started with God's

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1 word and he couldn't start with anything other than that  
2 because we're faithful Moslems and we depend on God and  
3 therefore as a Muslim, it's my duty to help the oppressed  
4 Muslim, it's my duty to help the needy, and it is also my duty  
5 to perform Jihad. There is that word again. Then there is in  
6 an Arabic; for the sake of God. That's why I started with the  
7 Q'ran. There is nothing else between us except God who is our  
8 fourth member, therefore, we will depend on God and get to the  
9 main topic. And Al-Moayad says: In the name of God, yes.

10 Now, CI-1 translates to CI-2. He says yes, the  
11 Sheikh says yes. So he is saying, and what you will hear when  
12 you listen to this because you won't understand the Arabic,  
13 the English you will hear is about pig eating Christians,  
14 infidels and hypocrites. And you'll hear the translation the  
15 sheikh saying yes, that is a mistranslation.

16 (Continued on next page.)

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1                   MR. GOODMAN: That wasn't what was being  
2 communicated at all.

3                   Over the four days then, very quickly, the idea of  
4 getting him, the Sheik, to agree he is going to send any money  
5 to al Qaeda is dropped completely. They know the score. They  
6 know they won't get him to say that. They start talking about  
7 Hamas more and more and more.

8                   So let's talk a little about Hamas. Ms. Moore  
9 talked very emotionally about a bombing in Israel. I don't  
10 know whether there is going to be evidence of that in this  
11 case or not. Certainly terrible things happened in Israel.  
12 There is as war going on there and people are killed and it's  
13 awful. And no one is going to stand up here and justify acts  
14 of terrorism, suicide bombings, the way in which people get  
15 killed and none of you need to be told.

16                  But the evidence is clear on this point also that  
17 there are tragedies on both sides of that war. It's not just  
18 one side. The Palestinian people are people without a  
19 government although they are now moving towards elections.  
20 There is no infrastructure. There are no hospitals in Gaza  
21 and the West Bank also. This is a place where people are in  
22 desperate need and can't get to their jobs. All of these are  
23 major problems and that is why so many people in the arabic  
24 world, even in the poorest countries, even in Yemen, support  
25 Palestinian charities, support them passionately.

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1                   And Sheik Al-Moayad is part of that. He supports  
2 Palestinian charities. He has notices posted on his mosque  
3 from various charities, the Al Laksa (ph) Foundation which  
4 helps Palestinian people, Inter-Pal (ph) which helps  
5 Palestinian people. All of these groups have posted thank you  
6 very much Sheik Al-Moayad, to you and your congregants for  
7 sending money that's going to help Palestinian people.

8                   Interestingly enough, there is not anything posted  
9 from Hamas. And Hamas, by the way, is an organization that  
10 also runs huge amounts of charities throughout Palestine,  
11 throughout the West Bank, throughout Gaza. Nothing is posted  
12 from Hamas because there is no evidence -- you will hear no  
13 evidence that he ever sent one nickel to Hamas.

14                  Now, Hamas is an organization that is widely  
15 recognized and supported throughout the Arab world. It's  
16 illegal in the United States. But it is widely supported in  
17 Yemen from the president of Yemen on down. It's widely  
18 supported in Saudi Arabia through all the huge allies; not the  
19 United States. There is huge support for Hamas throughout the  
20 Arab world.

21                  So the fact he knows someone from Hamas, the fact he  
22 has an Hamas entry in his telephone book -- the office of  
23 Hamas in Yemen is one minute away from his office, of his  
24 mosque, down the road; you get in the car and drive down  
25 there, you are at the Hamas office. And they are at every

1 important event, many important events that take place in  
2 Yemen.

3 All these things are true. But supporting Hamas up  
4 until these four days, not a part of his life. His life is  
5 his charities. His life is his mosque. And his life is other  
6 Palestinian charities.

7 On the 7th Sheik Al-Moayad is from the beginning  
8 concerned about his medical treatment. That's the first thing  
9 that comes up in the discussions that are recorded in his  
10 room, the first recorded discussions on the 7th. Let me show  
11 you an example.

12 This is the beginning meeting, CI-1: There's a lot  
13 of work to do; meaning we have got to record you saying some  
14 damaging things, in his head, that's the bubble in his head.

15 Zayed: We came for treatment.

16 Al-Moayad, the Sheik: We came for treatment, to get  
17 real treatment from a clever doctor, and Dr. Sa'eed.

18 That's also a term that's used. He is talking about  
19 CI-2 now.

20 God bless him. May God do good deeds through him.  
21 And we will meet, God willing, now we'll go to him.

22 The first words out of his mouth: We came for  
23 treatment.

24 Then they meet on the 7th and it becomes very clear  
25 that Sa'eed is pretending to be this political radical, you

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1 saw the way he talked. And then he wanted to talk about bin  
2 Laden. That's what happens on the 7th.

3 On the 8th, CI-2 talks about violence. He talked  
4 about al Qaeda, this is CI-2, the American, and speaks  
5 ignorantly about Islam. Sheik Moayad consistently turns the  
6 discussion to religion, politely deflects CI-2's remarks.

7 Then there is another meeting between Sheik Moayad  
8 and Mohammed Zayed and Al Anssi and they rehearse how they are  
9 going to talk to CI-2. And this is where they talk about code  
10 for the first time without CI-2 in the room. And they say --  
11 they make a list, a list in Al Anssi's handwriting of the  
12 charities he wants the money to go to; he wants it to go the  
13 bakery, he wants it to go to education, he wants it to go to  
14 education for women, which by the way, will also get him  
15 killed by al Qaeda. He emphasizes over and over again the  
16 need to educate women.

17 Day three, the two of them, the two defendants, are  
18 taped talking together in their room and it's clear that the  
19 Sheik, both of them, are upset about the demands that are  
20 being made on them, the pressure, the pressure to start saying  
21 yes, we will give money to Hamas. The pressure to talk about  
22 violent organizations all the time.

23 Sheik Moayad expresses his worries to Al Anssi and  
24 Al Anssi changes the subject. Sheik Moayad again on the 8th  
25 -- this is the 9th, excuse me, repeats the need for medical

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1 treatment and they discuss how to get out of it.

2               Then the two of them again alone at the end of the  
3 day discuss how can they get out of this proposition that CI-2  
4 is pushing on them.

5               Finally on the fourth day the Sheik frustrated and  
6 upset at the lack of medical treatment and the pressure by the  
7 confidential informants says what they want him to hear, yes,  
8 alright, Hamas, maybe we can do something. He is playing  
9 along, members of the jury.

10              And I want to show you again by the 10th he is still  
11 talking about the same thing and this is the pressure he is  
12 under. This is a man who is interested in one thing  
13 desperately.

14              Al-Moayad: Now ask him about my treatment, what did  
15 he do about it?

16              Now they talk in English so he is not understanding.  
17              CI-1 says: He was asking, you know, he was trying  
18 to make some medical treatment here, but I don't know if he is  
19 going to get time for that.

20              CI-2: Yeah; uhuh.

21              But he was asking, there is a lot of expenses to  
22 spend because he is going back immediately to Sana'a.

23              Uhuh.

24              He has got a lot of expenses, which he is going to  
25 spend in his trips to Hamas people, tickets, hotels, many

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1 camps. He is going to receive the Palestinian guys in Sana'a.  
2 So he said that the money which would be 10 percent you said  
3 already for the bakery is not going to touch anything for his  
4 personal traveling.

5 CI-2: So he wants to know what if he can -- I mean,  
6 he wants you to tell him any percentage more, you know, for  
7 these expenses. Because he is going to be beyond of his  
8 bakery's expense, is it going?

9 Back to the top again. He didn't say anything about  
10 that stuff. What he was asking about was medical treatment  
11 again and again and again, medical treatment which they are  
12 hanging over him which he wants so badly.

13 In order to prove the crimes against my client that  
14 the government has charged, they have to prove that he  
15 intended to commit these crimes.

16 Let's start with what the charges are. They must  
17 prove these things beyond a reasonable doubt, doubt. And the  
18 transcripts you are going to read are nothing if filled with  
19 doubt. They are filled with the letters "UI" after each  
20 sentence, after many sentences; that means unintelligible. We  
21 don't know what was said. We don't know how long the  
22 statement was said. These things are unintelligible.

23 These statements are not as clear as Ms. Moore would  
24 have you believe and they are certainly as not clear as I  
25 would have you believe, that's why I put up the transcripts up

1 for you. But they are filled with doubt about what was  
2 actually said.

3 And the first thing they have to prove beyond a  
4 reasonable doubt is intent. Material support for al Qaeda,  
5 the only thing, only evidence they have is that the Sheik said  
6 yes, I knew Osama bin Laden back in the '80s when he was  
7 fighting the Russians and maybe I gave him some money then as  
8 I said to the United States government. So intent, they have  
9 to prove intent.

10 The intent of even saying yes, I will split the  
11 money with Hamas, he is desperate, he needs treatment, he  
12 wants the money for his charities. And he finally says: All  
13 right, we will say that, I will say that. He says that the  
14 last day. Is that what he intended to do eventually, to split  
15 the money with Hamas? Not at all clear.

16 At one point he says: We will use the money for our  
17 purposes, we will do Jihad our way and let them deal with  
18 Hamas directly. And that's in the tapes too, several times.  
19 Even on the last day they are talking about the rich person  
20 who they talk about as troublesome: We will do Jihad our way;  
21 that means we will run our bakery, let him worry about the  
22 pig-eating Christians and the kinds of things that preoccupy  
23 him is what that means.

24 And then on the last day, Zayed and Al-Moayad talk  
25 between themselves and the conversation is this: What we are

1 going to tell them, this is what we are going to tell them.  
2 So they are staging something of their own too. And as I said  
3 the question of intent is absolutely critical here. There is  
4 no intent and the government will be unable to prove it beyond  
5 a reasonable doubt.

6 Material support for Hamas. Did he ever give Hamas  
7 any money? No evidence that he ever gave Hamas a red cent.

8 Did he ever attempt to give Hamas any money? Now,  
9 the judge will instruct you at the end of case but briefly  
10 intent, in order to engage in the crime of intent, which he is  
11 charged with here, he has to take a substantial step, he has  
12 to show he is really interested in doing something. He took  
13 substantial steps to get medical treatment because he was  
14 really interested in medical treatment. He took substantial  
15 steps. He was asking everyone he could about doctors. He had  
16 the names of doctors. He made calls back to Yemen to get the  
17 names of the doctors. He brought his medical records with  
18 him. That's an attempt.

19 Other than talking about: Okay, we will split the  
20 money, there is no substantial step that's been taken by Sheik  
21 Moayad.

22 And finally he is charged with conspiracy. And the  
23 only thing that you -- that I need to tell you about  
24 conspiracy here is that it is legally impossible to -- and the  
25 judge will instruct you, I can't talk about the law -- you

1 can't have a conspiracy between yourself and a government  
2 agent, the conspiracy has to be with others.

3 There was no conspiracy in this case and the --  
4 there will be no evidence of a conspiracy outside of the  
5 staged conspiracy.

6 Even if you find that they did commit one of these  
7 crimes, they, my client, is asserting a defense of what is  
8 called entrapment. Entrapment requires only two things, one,  
9 inducement. Clearly he was induced. He was beyond induced.  
10 He was coerced. He was pressured over a period of four days  
11 in this pressure cooker of this hotel room.

12 And that he was not predisposed to give money to  
13 Hamas, they have to prove that beyond a reasonable doubt. Not  
14 predisposed in the first place to give money to Hamas. There  
15 is no evidence he ever did before this. There is evidence he  
16 gave money to other Palestinian charities but not to Hamas.  
17 So clearly he was not predisposed. Clearly he was induced.

18 And if he did anything, he was entrapped by the  
19 government into doing it.

20 In the end, the government's case rises and falls on  
21 its recorded evidence, the reality show which they created.

22 You will see the evidence of the conversations.  
23 There is one piece of evidence that will not be produced by  
24 the government for you and that is the central figure in all  
25 of this, the point guard, Al Anssi. You will not hear from

1 him.

2 In the end, members of the jury, we will ask for a  
3 verdict of not guilty.. This was a reality show. All show, no  
4 reality.

5 Thank you.

6 THE COURT: I'm going to let the jury take a  
7 five-minute nature break, then we will come back and get  
8 Mr. Marks' opening statement.

9 (The jury leaves the courtroom.)

10 MS. MOORE: Your Honor, before you bring them out, I  
11 assume we will be going right into the first witness after  
12 Mr. Marks' opening, I wanted to take the opportunity to  
13 introduce Steven Thal; he is representing the German  
14 witnesses. I wanted to introduce him to the Court.

15 THE COURT: Okay.

16 (The jury enters the courtroom.)

17 THE COURT: Be seated, ladies and gentlemen.

18 Mr. Marks.

19 MR. MARKS: You remember my name. Thank you, your  
20 Honor.

21 Good morning. My name is Jonathan Marks and I  
22 represent Mohammed Zayed, the gentleman over there  
23 (indicating).

24 During Ms. Moore's opening, she very dramatically  
25 and passionately talked about that horrific tragic suicide

1 bombing in Tel Aviv as if to suggest that the people at this  
2 table (indicating) are the people who are protecting us  
3 against terrorism, the people who are opposed to terrorism and  
4 the people at this table (indicating) are in favor of  
5 terrorism. Nothing could be further from the truth.

6 We all hate terrorism. And that goes for everybody  
7 at the table. And it certainly goes for Mohammed Zayed. So  
8 right off the bat let's make it clear, we are all against  
9 terrorism.

10 Mohammed Zayed is 31 years old. He comes from a  
11 village in Yemen. Yemen is at the southern end of the Arabian  
12 Peninsula as Mr. Goodman told you, it is a very poor country  
13 and a very religious country.

14 How poor? Well, according to the CIA in 2004, the  
15 per capita income was \$800. That means that on average a  
16 person living in Yemen earned \$800 in the course of one year.  
17 That's how poor Yemen is.

18 Mohammed Zayed is the father of three. He has since  
19 1996 worked as the personal assistant to Sheik Al-Moayad.

20 Now, how is it that this young man of 33 -- 31 from  
21 a village in Yemen ended up in this courtroom in Brooklyn, New  
22 York? Well, I will tell you.

23 For that, he has to thank a man named Mohammed Al  
24 Anssi. But I gather from what Ms. Moore said that I will not  
25 have the opportunity to thank him in person so thank you

1 Mohammed Al Anssi for making all this possible.

2 Who is Mohammed Al Anssi? He is a paid informer for  
3 the FBI.

4 Let's go back a moment to September 11th, a day that  
5 we all remember that will be etched in our minds forever.

6 After September 11th, 2001, the FBI was starving for  
7 information about terrorists and rightly so. But in its very  
8 justifiable effort to find out about terrorism, it became  
9 vulnerable to characters like Mohammed Al Anssi who would sell  
10 the FBI a bill of goods in return for money and that's exactly  
11 what happened here. And I will tell you more about Mohammed  
12 Al Anssi in the course of my opening statement.

13 The story begins in 1996. In that year, Mohammed  
14 Zayed was all of 21 years old. He was inducted in the Army in  
15 Yemen. And after a few months in the Army, the Army said  
16 instead of performing military service, we want you to become  
17 an aide, a personal assistant to a well-known and  
18 well-respected cleric by the name of Sheik Al-Moayad, this  
19 gentleman (indicating).

20 Sheik Al-Moayad was very well-known in Sana'a which  
21 is the capital of Yemen because he ran a famous charity  
22 center; the charity center consists of a mosque, of course, a  
23 medical clinic, a school for young girls and perhaps most  
24 significantly a bakery for the poor, a very important  
25 charitable institution in Sana'a.

1               At first when Mohammed Zayed went to work for the  
2 Sheik, his duties consisted of driving the Sheik around,  
3 running errands for him, the normal duties of a personal  
4 assistant to an important personage.

5               But after some period of time, a relationship of  
6 trust developed between the Sheik and Mohammed Zayed and the  
7 Sheik put Mohammed Zayed in charge of the operation of the  
8 charity bakery. And that became the focus of Mohammed Zayed's  
9 life. He ran the bakery.

10              Fast forward now to June of 2002. Mohammed Zayed  
11 had just finished his afternoon prayers at the mosque in the  
12 charity center. He was leaving the mosque when he ran into  
13 the Sheik. The Sheik was in conversation with a Yemeni man  
14 whom Mohammed Zayed learned later was named Mohammed Al Anssi.  
15 And the Sheik said to Al Anssi: This is Mohammed Zayed. Make  
16 the travel arrangements with him. And Mohammed speaking to  
17 Zayed: I want you to show this gentleman around the bakery.

18              So Mohammed Zayed took Al Anssi, the paid informer,  
19 on a tour of the bakery. And in the course of this tour, Al  
20 Anssi said something very interesting, he said: You know, I  
21 know someone in New York who could make a large contribution  
22 to your bakery. He did not mention his name. Mohammed Zayed  
23 gathered up his passport and the Sheik's passport and gave  
24 them to Al Anssi so that he could make travel arrangements and  
25 Mohammed Zayed learned that the planned trip was going to be

1 to Frankfurt, Germany. And he learned that the Sheik intended  
2 to get medical treatment there.

3 On November 27 of 2002 Al Anssi called Mohammed  
4 Zayed on the telephone. He was calling from the states and he  
5 asked Mohammed: Have you got the tickets? And he said: Yes,  
6 they just arrived. And he said: Good. We are going to meet  
7 a man by the name of Saeed Sharif. Saeed Sharif is the owner  
8 of the Saeed commercial corporation in Brooklyn, New York.  
9 They sell Islamic goods and he is one of the founders of a  
10 well-known mosque in Brooklyn, the Al Taqwa Mosque.

11 Mohammed Zayed put two and two together and he said:  
12 This must be the guy whom Mohammed Al Anssi was talking about  
13 when I took him on the tour of the bakery. This must be the  
14 philanthropist who might make a large contribution to the  
15 bakery and we are going to meet him.

16 So it was Mohammed Zayed's understanding that he and  
17 the Sheik were going to Germany for the purpose of meeting  
18 this philanthropist who might make a contribution to the  
19 bakery. And that another reason for going to Germany was so  
20 that the Sheik, who is a diabetic, could get medical  
21 treatment. That was Mohammed Zayed's understanding.

22 Boy, was he wrong. Because what he did not know was  
23 the fact that Al Anssi had targeted the Sheik and Zayed as the  
24 subjects of an elaborate sting operation conducted by the FBI  
25 in conjunction with the German police.

1           The Sheik and Mohammed Zayed arrive at the airport  
2   in Frankfurt. They are met there by Mohammed Al Anssi who  
3   takes them to the Sheraton Hotel, a very nice hotel in  
4   Frankfurt. And there the Sheik and Mohammed Zayed are shown  
5   to their room, Room 6222 at the Sheraton, a very pleasant  
6   room, it was a suite actually with a bedroom. And you will  
7   see pictures of it and a sitting room where they could have a  
8   conversation and watch television.

9           Of course what they did not know was that this room  
10   was fully wired and that the FBI was some other place, was in  
11   some other room someplace along with the German police  
12   watching and listening to everything, every single thing that  
13   happened in that room.

14           Now, Al Anssi and Saeed Sharif, another informer,  
15   were installed in Room 6231. And similarly that room was  
16   wired for sound and was wired for video so that you could hear  
17   and see everything that happened in that room when the Sheik  
18   and Mohammed Zayed were in the room.

19           At first in the course of the meetings with Al Anssi  
20   and Saeed Sharif on the one hand and Sheik Al-Moayad and  
21   Mohammed Zayed on the other, the conversation was about the  
22   bakery because this was their main focus and it's quite clear  
23   that that is why they had come. But then Saeed Sharif says  
24   something very interesting. He speaking in English says: I  
25   don't have a problem in contributing to your bakery but my

1      thing is armed struggle. I was a Black Panther. I hate the  
2      U.S. I hate the Zionists. And what I want to do is to find a  
3      way of contributing money to terrorist organizations like  
4      Hamas, like al Qaeda.

5               Let me just set the scene for you.

6               Saeed Sharif is playing the role of the  
7      philanthropist. He speaks only English. Of course he knows a  
8      word or two of Arabic but it's very clear that the only  
9      language that he understands and speaks is English.

10               What about Sheik Al-Moayad? Arabic. That's his  
11      language. And it is very clear that he does not understand or  
12      speak English.

13               Now, if there is any doubt about that, we will play  
14      a part of the tape in which Al Anssi is on the phone speaking  
15      to somebody about getting towels and bathrobes. He is talking  
16      to somebody in the housekeeping department at the hotel on the  
17      phone. You can hear him very plainly. He says: We need some  
18      more towels up here. We need some bathrobes. We need some  
19      slippers. And then after Al Anssi hangs up the phone, Sheik  
20      Al-Moayad asks: What were you ordering, breakfast for us? So  
21      it's perfectly clear, no question about it, that Sheik  
22      Al-Moayad does not understand English.

23               As for Mohammed Zayed? Not a word.

24               So how was it then that these two Arabic-speaking  
25      people could communicate with Saeed Sharif, the

1 English-speaking philanthropist? And the answer is through  
2 Mohammed Al Anssi because Al Anssi speaks both English and  
3 Arabic.

4 So there is no direct communication between Saeed  
5 Sharif and Mohammed Zayed or Sheik Al-Moayad. Everything is  
6 sifted through Mohammed Al Anssi. And it's a very important  
7 point.

8 Why is it important? Because when you see and  
9 listen to these recordings, the only thing that you will be  
10 able to understand, unless you understand Arabic and I don't  
11 believe anybody here does, anybody in the jury, is the  
12 English. You will hear Saeed Sharif speak in English. You  
13 will hear Al Anssi speak in English. You will hear Al Anssi  
14 pretending to translate what the Sheik and Zayed say in Arabic  
15 into English. You will see Al Anssi pretending to translate  
16 what Saeed Sharif said in English into Arabic.

17 Why do I say pretending? It is because he miss  
18 translated. He embellished. He added. He subtracted.

19 So if you are interested in knowing what Sheik  
20 Al-Moayad and Mohammed Zayed knew, you cannot rely on Al  
21 Anssi's translation. If you want to know what they said, you  
22 cannot rely on Al Anssi's translation.

23 The only way that you will be able to tell what they  
24 knew and what they said is by reading the transcripts which  
25 will have a translation of what was told to them in Arabic and

1 what they said in Arabic. That is the only way.

2 And let me demonstrate this to you.

3 You remember that Ms. Moore in her very fine opening  
4 statement said that at some point early on and it was on  
5 January the 8th all of the participants in this conversation  
6 put their hands on the Quran and they took an oath and this is  
7 what the Sheik Al-Moayad and Zayed said. The Sheik: First, I  
8 wish to talk about three things. That our meeting is based on  
9 honest, and secrecy and God is our observer.

10 I think the word is "honesty." I think I wrote it  
11 wrong.

12 He says: Which means we have to all put our hands  
13 on the Quran and with God's help, we won't let each other down  
14 and we will not lie. Second, we will do our best effort and  
15 if we die, he has to forgive us.

16 Then Zayed said: Quietly.

17 And the Sheik continues: It's with God.  
18 Forgiveness is with God. Not with people. No, no. Forgive  
19 us in front of God. That is the second thing is to forgive  
20 one another.

21 And Zayed says: This subject needs quietness.

22 And the Sheik says: That's the second thing and I  
23 hope we pay attention to it. The first is keeping a secret.  
24 The second is to forgive each other and we'll do our best as  
25 much as possible.

1               And then the Sheik says: The third is to support us  
2 because we personally don't have money for ourselves and for  
3 our children so he has to help us so we don't take from this.

4               Now, let's look at the way that Al Anssi translates  
5 this for the benefit of Saeed Sharif but really for the  
6 benefit of the audience in the other room, the FBI agents.

7               This is what you will hear Al Anssi say in English.  
8 He, meaning Al-Moayad: He said of course when you support us  
9 by money, you give us, for example, okay, this is for you to  
10 spend it because we need also support for our families for our  
11 things. When you tell us this is for you and this is for the  
12 other job. So that means, he said, we are going to eat from  
13 the thing you give us to our family as halal.

14              That means kosher.

15              The other thing you give us to do something on it,  
16 we are going to do for that thing. I mean when you tell us to  
17 buy weapons, we'll buy weapons. The other money which you  
18 give us for our food, I mean, for the bakery, this thing is  
19 separate and this is going to be separate.

20              Now, if all that you know about this conversation is  
21 what you hear Al Anssi say in English, you will get a  
22 completely false impression of what the Sheik said because he  
23 didn't say anything at all about buying weapons. He never  
24 promised to buy weapons at all. You can go over that  
25 transcript and see what he really said.

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1           What I'm suggesting to you is that the English  
2 portions of this transcript are of no use to you whatsoever in  
3 determining what it is that Sheik Al-Moayad and Mohammed Zayed  
4 said. The only thing that is of use to you is the English  
5 translation on the transcripts.

6           Now, this also goes for what it is that they were  
7 told. Let me give you another example. Now, this is also on  
8 the 8th.

9           CI-2 is Sharif. Saeed Sharif says: Are there any  
10 Hamas members or Mujahidins who took part in any action  
11 against the big Shayateen, the U.S.A., alright? Did they, the  
12 reason I asked that is because if for some reason I personally  
13 would like to hookup with someone, if there are some people  
14 here in New York who could -- of course they are in Frankfurt  
15 -- who could assist me in expropriating some money, more money  
16 from banks, all right? Payroll, armored cars, tell him that  
17 is what I specialized in.

18           This is really incendiary, inflammatory stuff; isn't  
19 it?

20           What he is asking Al-Moayad is can you put me in  
21 touch with people who can help me rob banks, rob armored cars,  
22 steal money for the purpose of engaging in terrorism. Can you  
23 do that?

24           And this is the way that Al Anssi translated that  
25 last passage, this is the Arabic: In addition, he says -- he

1 in this case is Saeed Sharif: In addition he says that he'd  
2 like to personally know if there are Hamas people in New York.  
3 Since they are distant from the organization as you know. If  
4 there are people who need support young men, Mujahidins, he  
5 calls them God's soldiers. He says that he doesn't mind  
6 supporting those people inside the U.S.A. Nothing about  
7 armored cars. Nothing about expropriating money from banks.  
8 So another example of how you cannot rely on what you are  
9 going to hear in English.

10 The government by the way is going to tell you that  
11 the English is being offered for the purpose of context, not  
12 for the truth but context. What kind of context is this?  
13 They couldn't even understand it.

14 Now, there came a time in the course of these  
15 conversations as I was telling you when Saeed Sharif said:  
16 There is a catch. I will support your bakery. I will give  
17 you money for your bakery and your charities but there is  
18 something that I want you to do for me. I'm interested in  
19 getting money to these terrorist organizations as I told you.

20 How does the Sheik react to this? Does he say no  
21 problem, I love terrorism, I would be very happy to put you in  
22 touch with terrorists so that you can give them money, does he  
23 say that? Not at all.

24 What he says is: I can't say yes, yes because that  
25 would be a lie. And I can't say no, no because that would

1      embarrass you. He doesn't answer the question.

2                He certainly does not say right on.

3                How much money are we talking about? How much money  
4      was the Sheik supposed to get for his bakery and for whatever  
5      purpose he wanted? \$250,000, a fortune in Yemen. It would  
6      have made him a Rockefeller. We are talking about a country  
7      where the pro capita income is \$800 a year.

8                So one of the ways that the Sheik and Mohammed Zayed  
9      deal with this suggestion that they help funnel money to  
10     terrorism is by being evasive. They don't answer the  
11    question.

12              Now, why don't they flat out say: Forget it, buddy,  
13    and walk away? The money. \$250,000. So they look for some  
14    way of getting that \$250,000 without dirtying their hands,  
15    without really giving the money to Hamas or al Qaeda.

16              So what do they suggest? Well, they talk about the  
17    possibility of this: Hey, why don't you give us the \$250,000  
18    and then you can give the money to Hamas directly. How about  
19    that? No, no, that's not going to work, Al Anssi says.

20              Now, Hamas, by the way, is a legitimate organization  
21    in Yemen. I'm not suggesting for a second that I or anybody  
22    else at that table approves of what they do, approves of their  
23    terrorism and their suicide bombing and bombing of buses, not  
24    for a second. But I'm just telling you what the story is.

25              You have to understand that Hamas has an office in

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1 Yemen, it's not a secret organization there. They have an  
2 office and anybody can walk into the office and meet with  
3 Hamas people. It's a major organization there because in  
4 addition to doing these horrible things, apparently they do  
5 some good things to. They run hospitals. They run schools.  
6 They contribute to the poor.

7 Now, there comes a time in the course of this  
8 conversation over a period of four days when Saeed Sharif and  
9 Al Anssi try to rope Zayed in. Now, remember Zayed is pretty  
10 quiet during most of this conversation. But they decide they  
11 have got to grab him because he said very little. So this is  
12 what they decide to do.

13 Al Anssi and Saeed Sharif concoct this scheme and  
14 Sharif says: I'm going to ask him, ask Zayed, what's going to  
15 happen to my money. Suppose something happens to the Sheik.  
16 Suppose the Sheik dies. How do I know what you are going to  
17 do with my money? Are you going to give my money to the  
18 people I want you to give it to? And he asks specifically  
19 where is my money going.

20 (Continued on the next page.)

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24

25

1                   MR. MARKS: Does Mohammed Zayed say it is going to  
2 Hamas, it's going to wherever you want it to go, does he say  
3 that? He certainly does not. What he says is it's in God's  
4 hands. That's all he says. Another example of evasion and  
5 why not, why not. After all, this guy, this philanthropist  
6 has said we'll give you \$250,000 to use as you see fit but  
7 this is what you have to do for me but Zayed doesn't like this  
8 idea, it's very clear he doesn't like this idea so he evades  
9 and he does not answer the question and he certainly does not  
10 enter into a conspiracy with anybody to contribute money to  
11 Hamas or to Al Qaeda, he evades.

12                  You may ask why didn't this man from Yemen just walk  
13 out of that hotel room and say forget it. Well, there are a  
14 few reasons. First of all, they had come all the way from  
15 Yemen to Germany for the purpose of meeting this  
16 philanthropist who it turned out had a vast fortune that he  
17 was prepared to contribute to the bakery.

18                  Mohammed Zayed is a loyal employee of Sheikh  
19 Al-Moayad. What is he to do. Is he to say I have nothing to  
20 do with this, I'm leaving. Well, of course he can't do that.  
21 First of all, that's not his role, is it. It's not his place.  
22 He is an employee an underling. Second, does he really want  
23 to jeopardize the possibility of getting \$250,000, of course  
24 not. Third, here's a guy who speaks not a word of English,  
25 not a word of German. What in the world is he supposed to do.

1 He is for all intents and purposes a prisoner in that hotel.  
2 He can't go anyplace on his own. He's stuck. So, in some  
3 small ways he takes part in the conversations. But what's  
4 significant is that he never reaches an agreement with  
5 Al Anssi or with Saeed Sharif to do what it is that Saeed  
6 Sharif wants him to do which is to promise to funnel money  
7 to Al Qaeda or Hamas. He never ever does that and he never  
8 reaches an agreement with the Sheikhs to do that.

9 Now, why is that significant; it's significant  
10 because Mohammed Zayed is being charged with conspiracy and as  
11 His Honor will charge you at the end of this case, you can't  
12 be convicted of conspiracy if you conspire with an informer.  
13 So, who was he supposed to conspire with. Well, I suppose it  
14 would be the Sheikh. And you will have to ask yourselves did  
15 he really enter into an agreement with the Sheikh or with  
16 anybody else who was not an informer who funnel money to Al  
17 Qaeda or to funnel money to Hamas. And what I suggest to you  
18 in the strongest possible terms is that there is no evidence  
19 that he ever did that. That's what he's charged with.

20 Finally, Ms. Moore told you about Mohammed Zayed's  
21 post-arrest statements. This -- you cannot imagine what  
22 happened here. I mean here's this guy, this simple man is  
23 basically a prisoner in this hotel room for four days and then  
24 all of a sudden these German police storm into the room  
25 wearing masks, carrying automatic weapons. They push the

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1      Sheikh and Mohammed Zayed against the wall, you're under  
2      arrest. Was Mohammed Zayed scared, you bet he was scared.  
3      And they said you engaged in an agreement to funnel money to  
4      Hamas and he said I don't know anything about this, I was in  
5      the bathroom.

6               Well, he wasn't in the bathroom, he was actually in  
7      the room, as you'll see, for many of these conversations but  
8      he never, as the evidence will show, engaged in any kind of  
9      conspiracy or attempted to funnel money to Hamas or Al Qaeda,  
10     never ever.

11              So, what I'm going to ask you to do is to pay very  
12     careful attention to the evidence in this case and that is  
13     going to be a hard job because it is going to mean reading  
14     these transcripts very, very carefully because that's their  
15     case. They're not calling Al Anssi, it all turns on the  
16     transcripts. And forget about all this smoke about how  
17     horrible terrorism is, we all know how horrible terrorism is.  
18     That's not going to help you decide this case but at the end  
19     of this case on the basis of the evidence alone I'm going to  
20     ask you to send this man back to Yemen.

21              THE COURT: Okay. Ladies and gentlemen, what's  
22     going to happen with the next phase is live testimony. We're  
23     going to be getting lunch for you. When it comes, they'll let  
24     me know but until then we'll continue with the trial, the  
25     government will put witnesses on.

1 Ms. Moore.

2 MS. MOORE: The United States calls Joerg Wollman  
3 who will need a German interpreter, Your Honor.

4 THE COURT: Spell the name.

5 MS. MOORE: J O E R G, last name W O L L M A N.

6 (German interpreter Gisela Brett sworn by the  
7 Court.)

8 (Witness sworn by the Court.)

9 J O E R G W O L L M A N, having been first duly  
10 sworn was examined and testified through the  
11 interpreter as follows:

12 THE COURT: State your name and spell it for the  
13 record.

14 THE WITNESS: Joerg Wollman, J O E R G,.  
15 W O L L M A N N.

16 DIRECT EXAMINATION

17 BY MS. MOORE:

18 Q Where are you from?

19 A I'm from Wiesbaden in Germany.

20 Q Where do you work?

21 A I work for the Bunkeskriminalamt in Wiesbaden.

22 Q Is that also known as the BKA?

23 A Yes.

24 Q Is that essentially the German equivalent of the FBI?

25 A Yes.

1 Q What is your title at the BKA?

2 A I am the supervisor for criminal investigation.

3 Q For how long have you worked at the BKA?

4 A For about 25 years.

5 Q Are you assigned to any particular unit or squad within  
6 the BKA?

7 A Yes, I belong to the unit OA-53 which is the central unit  
8 for the handling of CIs.

9 Q CIs meaning confidential informants?

10 A Yes.

11 Q For how long have you been in that unit?

12 A For seven years.

13 Q And what is your role within that unit?

14 A I'm the handler of a team of CI handlers.

15 Q Let me direct your attention to the fall of 2002.

16 Did the BKA receive a request for legal assistance from the  
17 United States and the FBI?

18 A Yes.

19 Q To whom was that request addressed?

20 A The request was addressed to our office at my attention.

21 Q What was that request?

22 A The request regarded a meeting between two targets and  
23 two CIs and we were requested to carry out an electronic  
24 surveillance of this meeting.

25 MR. GOODMAN: Your Honor, I wonder if it is possible

1 to put the screen out of the way because I cannot see the  
2 witness from where I'm sitting.

3 THE COURT: Okay.

4 MR. GOODMAN: Thank you.

5 Q What, if anything, did you do in response to that  
6 request?

7 A After we received the request, first of all, we checked  
8 the names of the CI persons in our system to make sure that  
9 everything was okay. And we took care of the formalities to  
10 make it possible to carry out this operation. We contacted  
11 the prosecutor to make sure that we had the legal frame to  
12 carry out this operation.

13 Q Was that a German prosecutor or an American prosecutor?

14 A It was a German prosecutor.

15 Q What did you do next?

16 A Then we contacted all the units within our office who  
17 were going to be involved in this operation and that is the  
18 unit CB-44 which is the mobile operation unit and the ST-31  
19 which is in charge of criminal investigation.

20 Q What did you do after you notified those individuals?

21 A We arranged a meeting, an operational meeting on  
22 December 11th to discuss the details of the operation.

23 Q Who attended the meeting?

24 A The prosecutor was present, the head of CB -- of ST-31,  
25 CB-44, my office and the people who were going to be carrying

1 out the operation.

2 Q Once again, that was the German prosecutor?

3 A Yes, that was the prosecutor in charge in Frankfurt,  
4 Germany.

5 Q What happened at that meeting?

6 A We discussed the details and who was going to be in  
7 charge of what during the operation and we set up a general  
8 plan about how this operation was going to be run.

9 Q What was the general plan, investigative plan that you  
10 came up with?

11 A The general investigative plan was to prepare two hotel  
12 rooms at a hotel in Frankfurt and to survey, monitor the  
13 contacts between the target persons and the CIs.

14 Q Eventually was a specific hotel selected?

15 A The Sheraton Airport Hotel in Frankfurt.

16 Q After the meeting on December 11th, 2002 what were your  
17 responsibilities and duties in connection with this operation?

18 A My job was to prepare the operation, especially in  
19 getting the formal and legal requirements for using the CIs.

20 Q What did you do -- when did the CIs arrive in Germany?

21 A If I recall correctly, on January 6, 2003.

22 Q What did you do once they arrived there?

23 A The evening of that same day we had our first meeting  
24 together with our colleagues of the FBI to get to meet each  
25 other and to discuss the plan.

1 Q After that first meeting, over the course of the  
2 operation how much contact did you have with the CIs?

3 A We had daily contacts as long as they were in Germany.

4 How many contacts per day I don't recall.

5 Q Were FBI agents always there when you met with the CIs?

6 A Yes, this was an operation we carried through together  
7 and these meetings were always with our colleagues from the  
8 FBI.

9 Q And what was the purpose of your meetings with the  
10 informants?

11 A To instruct them what they were supposed to do during  
12 their meetings with the targets and at the end of those  
13 meetings to debrief them about the information they had  
14 gathered.

15 Q How many days did the undercover operation last in  
16 Germany?

17 A Altogether, four days.

18 Q Where did you meet with the CIs during that time?

19 A At the Hotel Sheraton in Frankfurt in a separate room.

20 Q What type of hotel was the Sheraton in Frankfurt?

21 A The Sheraton hotel is a large business hotel directly  
22 adjacent to the airport and connected to the airport through a  
23 sky walk.

24 Q Was the regular business operation of the hotel disrupted  
25 by the undercover operation?

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1 A No.

2 MS. MOORE: Your Honor, may I approach?

3 THE COURT: You may.

4 Q Let me show you what's been premarked for identification  
5 as Government Exhibit 13 A and ask you if you recognize it?

6 A Yeah, that's the lobby of the hotel.

7 Q Does this photograph fairly and accurately depict what  
8 that lobby looked like in January of 2003?

9 A Yes, with more people in the lobby.

10 MS. MOORE: Your Honor, I offer Government  
11 Exhibit 13 A.

12 THE COURT: Have you shown it to your colleagues?

13 MS. MOORE: I have.

14 THE COURT: Any objection?

15 MR. MARKS: No, Your Honor.

16 MR. GOODMAN: No objection.

17 THE COURT: It's received.

18 MR. GOODMAN: May I see the exhibit?

19 (Pause.)

20 Q During the undercover operation at the Sheraton Hotel  
21 were the BKA agents involved in that operation in plainclothes  
22 or uniform?

23 A They were wearing civilian clothes.

24 Q During the four days that you were involved in this  
25 operation did you ever observe any German soldiers anywhere in

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1 that hotel?

2 A No.

3 Q Did you ever observe anyone openly carry a gun?

4 A No, this was an undercover operation so this was not  
5 indicated.

6 Q When did the undercover operation end?

7 A On January 10th.

8 Q 2003?

9 A Yes.

10 MS. MOORE: Your Honor, may I have a moment.

11 THE COURT: Yes.

12 (Pause.)

13 MS. MOORE: No further questions, Your Honor.

14 THE COURT: Cross.

15 (Pause.)

16 THE COURT: Just a second. Why don't you get that  
17 stand and put it on the stand.

18 MR. GOODMAN: Thank you, Your Honor. Good idea.

19 THE COURT: And I suggest you put it someplace  
20 around here.

21 MR. GOODMAN: Can you see it, sir?

22 THE WITNESS: Yes.

23 THE COURT: If the witness can't see it, he can step  
24 down.

25 CROSS-EXAMINATION

1 BY MR. GOODMAN:

2 Q Who took this picture?

3 A I don't know.

4 Q When was it taken?

5 A I don't know.

6 Q Is there anybody -- do you have any explanation as to why  
7 this picture has this kind of fuzzy look to it?

8 A No.

9 Q Do you know if there's anybody in the lobby at all?

10 A On this picture I only see some people on the left.

11 MR. GOODMAN: Could I ask the witness to step down  
12 and point that out.

13 THE COURT: Go ahead.

14 (Witness steps down.)

15 THE WITNESS: It looks as if there's people  
16 (indicating) but I'm not sure, I can't be sure.

17 MR. GOODMAN: Okay. Thank you.

18 (Witness resumes the stand.)

19 Q Now, when you say targets, you mean Sheikh Al-Moayad, the  
20 defendant here, and Mr. Zayed; is that correct, sir?

21 A Yes.

22 Q And did you see them at all during the four-day period  
23 that we're talking about which would be January 7th to  
24 January 10th?

25 A Directly in person, no.

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1 Q You saw them on a television monitor?

2 A Yes.

3 Q In their room and in the CI's room; is that correct, sir?

4 A Yes.

5 Q And did you ever see them in that hotel lobby?

6 A No.

7 Q Now, where were you watching the TV monitor when you  
8 could watch these two gentlemen during that four-day period?

9 A In a separate room.

10 Q Who was with you in that room?

11 A Several people, most of them were technicians.

12 Q Was there an Arabic translator?

13 A No.

14 Q And any time while you were in that room was either of  
15 the CIs, the confidential informants with you?

16 A No.

17 Q Do you speak Arabic?

18 A No.

19 Q Do you know whether any of the technicians spoke Arabic?

20 A No.

21 (Pause.)

22 THE COURT: Let's go.

23 MR. GOODMAN: Yes, Your Honor.

24 Q You say you also had regular meetings with the CIs in  
25 which you instructed them as to how to proceed during the next

1 meeting they were to have; is that correct?

2 A Yes.

3 Q How often did you have those meetings?

4 A That depended on the course of the events but definitely  
5 daily.

6 Q Sometimes more than once a day?

7 A Yes.

8 Q Did you take notes of those meetings?

9 A No.

10 Q How did you know what had happened -- withdraw that  
11 question, I'm sorry.

12 Were the instructions which you gave to the  
13 confidential informants based upon what had happened at the  
14 previous meeting between them and the targets?

15 A Yes.

16 Q How did you know what had happened during the previous  
17 meeting between the CIs and the targets?

18 A Two sources, once we knew what happened during the  
19 previous meetings from the CIs who we debriefed and also there  
20 were rough translations made of the conversations taking place  
21 of which we had a transcript.

22 Q Were those transcripts in German or in English?

23 A Some were in English, some were in German.

24 Q Do you have copies of those transcripts with you?

25 A No, that was not my task, that was the job of the

1 investigative unit. I've never seen them.

2 Q Now, in part, your briefing or the instructions to the  
3 CIs was based on what they had told you had occurred, is that  
4 correct?

5 A Correct.

6 Q So, in order to instruct them you had to believe them; is  
7 that correct?

8 A Yes, first of all, we listened to --

9 Q Excuse me. I simply asked the witness whether or not  
10 that was correct, in order to instruct them he had to believe  
11 what they told him.

12 THE COURT: He can answer yes or no.

13 MS. MOORE: Your Honor, I ask that his original  
14 answer be translated.

15 THE COURT: How do you know it is not translated?

16 MS. MOORE: Because he was cut off by the defense  
17 counsel and asked to say just say yes or no when the question  
18 required more than a yes or no answer.

19 MR. GOODMAN: Without conceding that it required  
20 more than a yes or no answer, I will agree that we can have  
21 the full answer repeated and then I'll ask him for a yes or  
22 no.

23 THE COURT: Do you recall the question? You can ask  
24 him again, Mr. Goodman.

25 Q Yes. The question was whether in order to instruct the

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1   CIs you had to believe them?

2   A    Yes.

3   Q    You had checked the CIs out before you -- withdraw that  
4   question.

5                 You had indicated in your direct examination that at  
6   some point you checked the CIs out through your sources; is  
7   that correct?

8   A    Yes.

9   Q    Did you have any information on them?

10   A   No.

11   Q    You met also with FBI agents regularly; is that correct?

12   A   Yes.

13   Q   Who were the FBI agents?

14   A   I'm not authorized to testify to their names.

15   Q   Who has to authorize that?

16   A   My right to testify excludes testimony on names of  
17   certain divisions within -- departments within our  
18   organization or names of colleagues or any names.

19                 MS. MOORE: Your Honor, I object to the question on  
20   the ground of relevance, the names of the specific agents  
21   involved is not relevant.

22                 MR. GOODMAN: I believe that it is relevant, Your  
23   Honor, but given the fact that this gentleman is constrained  
24   by what he believes to be German law, I'll withdraw the  
25   question.

1                   THE COURT: Okay.

2   Q   One final question, you say you received authorization to  
3   engage in this operation on January 6th, 2003; is that  
4   correct?

5   A   Yes.

6   Q   Which would be a day before the operation started; is  
7   that right?

8   A   Perhaps I misunderstood you. We had the legal  
9   authorization for the operation before January 6th but I was  
10   only in charge of the legal authorization for using the CI  
11   persons.

12   Q   And that you received on January 6th?

13   A   No, we received that before January 6th.

14   Q   All right. Well, then maybe I misunderstood. Thank you  
15   very much Mr. Wollman.

16   CROSS-EXAMINATION

17   BY MR. MARKS:

18   Q   Good afternoon. I just have a couple of questions for  
19   you. Who was paying the CIs?

20   A   The FBI.

21   Q   And now, you said that you were watching what was going  
22   on in the hotel rooms from another room; is that right?

23   A   Yes.

24   Q   You could see what was going on on video monitors?

25   A   Yes.

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1 Q And you could hear what was going on through speakers?

2 A Yes, but not in my language.

3 Q Yes. And you said that there were technicians in that  
4 room?

5 A Yes.

6 Q How about FBI agents?

7 A Yes.

8 Q But no Arabic translator?

9 A No, not in that room, no.

10 Q And to your knowledge, did any of the FBI agents in that  
11 room understand Arabic?

12 THE COURT: I'm going to strike that.

13 Q Now, you said that you -- that you had meetings from time  
14 to time with the informants?

15 A Yes.

16 Q Did the FBI participate in those meetings?

17 A Yes.

18 Q Now, finally, sir, you said that during the undercover  
19 operation you did not see any people carrying guns openly?

20 A Yes.

21 Q Where were you when Sheikh Al-Moayad and Mohammed Zayed  
22 were arrested?

23 A In a separate room, in a room of the hotel.

24 Q Could you see the arrest on a video monitor?

25 A No.

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1 Q Did you see any of the arresting officers before they  
2 went into the room?

3 A No.

4 Q Did you see them after the arrest?

5 A No.

6 MR. MARKS: No further questions. Thank you, sir.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MS. MOORE:

10 Q Mr. Wollman, you indicated that you and other agents were  
11 able to observe what was going on in one place in the hotel?

12 A Yes.

13 Q Are you aware that in addition to the room where you  
14 could watch the operation, there was a separate room being  
15 monitored by technicians and Arabic interpreters?

16 A Yes.

17 MS. MOORE: No further questions, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. GOODMAN:

20 Q Were you ever in that second room that Ms. Moore just  
21 referred to?

22 A Yes.

23 Q And what did -- why would you go into the second room,  
24 what was the purpose?

25 A Because that's where the translation took place.

1 Q And you were monitoring the translation?

2 A I saw the translation but I was not listening to any live  
3 interpretation.

4 Q Was there live interpretation?

5 A Yes, there were interpreters who translated, interpreted  
6 there directly.

7 Q Out loud?

8 A Normally they were sitting there with headsets.

9 Q But were they saying -- were they speaking, were they  
10 translating simultaneously; in other words, as the  
11 conversation was going on, were they say speaking into a  
12 microphone or speaking out loud and saying the things that  
13 were being said?

14 A No, as far as I know, no.

15 Q Were there FBI agents in that room also?

16 A I don't think so.

17 Q Were there any times when the CIs were in that room?

18 A No.

19 MR. GOODMAN: Thank you.

20 THE COURT: Mr. Marks?

21 MR. MARKS: Nothing, Your Honor.

22 THE COURT: Okay. You can step down. Thank you  
23 very much.

24 We'll work until we hear from Augie.

25 MS. MOORE: Okay. The United States calls Udo

1 Glauner.

2 (Witness takes the stand and is sworn by the Court.)

3 U D O G L A U N E R, having been first duly  
4 sworn was examined and testified through the interpreter  
5 as follows:

6 THE COURT: Have a seat. State and spell your name  
7 for the record.

8 THE WITNESS: My name is Udo Glauner, U D O,  
9 G L A U N E R.

10 DIRECT EXAMINATION

11 BY MS. MOORE:

12 Q Where are you from?

13 A I'm from Germany.

14 Q Where do you work?

15 A I work for the Bundeskriminalamt.

16 Q How long have you been with the BKA?

17 A Since 1978.

18 Q What is your current title?

19 A I am supervisor of criminal investigation.

20 Q Are you assigned to any particular squad?

21 A Yes.

22 Q What squad is that?

23 A It's a squad for technical and physical surveillance.

24 Q What is your role within that squad?

25 A I'm head of the department of the field of video and

1 audio surveillance.

2 Q What is the geographic area in which you work?

3 A For all of the Federal Republic of Germany.

4 Q Let me direct your attention to the winter of 2002. Did  
5 you learn of a formal request for legal assistance from the  
6 United States and the FBI in an investigation?

7 A Yes.

8 Q What was the United States's request for assistance?

9 A As far as our department was concerned, we were requested  
10 to carry out physical and electronic surveillance of a meeting  
11 over a certain period of time that was going to take place in  
12 Germany.

13 Q What type of electronic and other surveillance was  
14 determined to be needed for the U.S. request?

15 A There were several surveillance equipments that were  
16 needed.

17 Q To the best of your recollection, can you list them?

18 A Yes. First of all, there was the request to wiretap  
19 certain facilities within a hotel; the video and audio  
20 surveillance of these same facilities; the use of an IMSI  
21 catcher.

22 THE COURT: What is that?

23 THE WITNESS: It is a device that is used to find  
24 out the telephone numbers of mobile telephones.

25 THE COURT: Go ahead.

1                   THE WITNESS: Audio and video surveillance, and  
2 audio surveillance of a vehicle.

3 Q       How much of that was your squad tasked with  
4 accomplishing?

5                   THE INTERPRETER: Excuse me.

6 Q       How much of that was your squad responsible for  
7 accomplishing?

8 A       It was our task to carry out all these steps and then  
9 carry out the surveillance.

10 Q      Did you eventually do all of that?

11 A      Yes.

12 Q      Who supervised it?

13 A      I did.

14 Q      Did you have legal authorization to do it all?

15 A      We had received court order for all measures that we were  
16 going to carry out.

17 Q      What was the first thing you focused on to accomplish the  
18 technical aspects of this undercover operation?

19 A      Well, first we chose the facilities, the rooms in a hotel  
20 in Frankfurt and we inspected them and then we did all the  
21 preparation necessary to install the equipment.

22 Q      How long did it take you to install the audio and video  
23 recording devices in the hotel room?

24 A      It took us four days.

25 Q      How many rooms --

1                   THE COURT: Just a second, was it four days to  
2 install this you said?

3                   MS. MOORE: Yes.

4                   THE COURT: Okay.

5 Q       How many rooms did you wire for sound and audio?

6 A       Two.

7 Q       In what hotel?

8 A       The Sheraton Airport Hotel in Frankfurt.

9 Q       What type of rooms were they?

10 A      Two suites.

11                  MS. MOORE: Your Honor, may I approach the witness?

12                  THE COURT: You may.

13 Q       Let me show you what's been premarked for identification  
14 as Government Exhibit 13 B and ask you if you recognize it?

15 A       Yes.

16 Q       What is it?

17 A       It's the layout of one of the hotel rooms where the  
18 targets were and one of the facilities that we prepared for  
19 surveillance.

20                  MS. MOORE: I offer Government Exhibit 13 B.

21                  MR. GOODMAN: No objection, Your Honor.

22                  MR. MARKS: No objection, Your Honor.

23                  THE COURT: Received.

24                  THE COURT: You can put it up on this thing here.

25                  MR. GOODMAN: May I look at it? I'll come around.

1 Q You indicated that that was a target's room; is that  
2 correct?

3 A Yes.

4 Q Did the informant's room look the same?

5 A Yes, it was the same room, the mirror image of each  
6 other.

7 Q After installing the technical surveillance equipment in  
8 the hotel rooms did your squad do anything else?

9 A Well, after we installed the necessary equipment we ran  
10 some tests to see and improvised some scenes to make sure that  
11 the technical devices were functioning properly.

12 Q And when did you run those tests?

13 A In the late afternoon of June 5th, 2003 immediately after  
14 we had finished the installation.

15 MS. MOORE: This question is directed to the  
16 interpreter. Did he say June 5th or January 5th?

17 (Interpreter confers with the witness.)

18 THE INTERPRETER: I think he said January 5th,  
19 sorry.

20 Q When did the targets of the investigation arrive in  
21 Germany?

22 A In the morning of January 7th.

23 Q Were you working on that day?

24 A Yes.

25 Q What did you do?

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1 A I supervised the operation in the way that I made sure  
2 that all the devices were installed and that all my agents who  
3 were working that day were in place.

4 Q Was there a room where the actual audio and video  
5 recordings from the hotel rooms were being recorded?

6 A Yes.

7 Q Can you describe what was in that room?

8 A Yes, in this room were all the necessary recording  
9 devices to record the wiretap telephone lines and the video  
10 and audio surveillance.

11 Q How was that room staffed during the undercover  
12 operation?

13 A There were two people from my department, two technicians  
14 who worked there in 12-hour shifts; there were two  
15 interpreters who interpreted the audio part and the CI  
16 handlers of the FBI and our own CI handlers. But the CI  
17 handlers only dropped in from time to time when there were  
18 conversations going on in the surveilled room.

19 MR. GOODMAN: Excuse me, I'm sorry, I could not hear  
20 the German translator and I wonder whether or not I may impose  
21 upon the Court and the reporter to read back the last full  
22 answer.

23 THE COURT: Yes.

24 (Whereupon, the record was record.)

25 Q How many hours a day did your agents work in that room?

1 A The rooms were staffed around the clock and our people  
2 worked in two shifts of 12 hours each.

3 Q Who supervised the BKA agents who staffed that room?

4 A I did.

5 Q What were their responsibilities?

6 A They were instructed to make sure that the recording  
7 devices were functioning correctly at all times and that the  
8 recording took place properly and that the interpreters got  
9 the best possible signal at all times.

10 Q What were their instructions if a tape filled up while  
11 they were working a shift?

12 A Well, as we always do, the labels are -- the full tape is  
13 taken out, it is labeled with the exact time of when it is  
14 taken out and it is sealed and put in a safe place and a new  
15 tape is inserted again with the exact time of the insertion on  
16 the label.

17 Q When you say it is put in a safe place, where is it put  
18 at that point?

19 A In our room there was a safe where these tapes were  
20 locked.

21 Q Who knew the combination to that safe?

22 A I and my associates knew the combination.

23 Q What were the audio and video recordings from the hotel  
24 rooms recorded onto?

25 A The audio recording was recorded on a device from the

1 company Atis, A T I S. And the video recordings were recorded  
2 on a digital computer made by the company Alkatraz.

3 THE COURT: Just a second, can you spell that.

4 THE INTERPRETER: A L K A T R A Z.

5 Q And what form did the end product take that the items  
6 were recorded onto?

7 A The recording, the audio recordings were done on magnetic  
8 tapes, Atis tapes, and the video recordings on a digital hard  
9 drive.

10 Q How many copies of the Atis audiotapes were recorded from  
11 the onset?

12 A In Germany we have to, it's -- that's the requirement to  
13 have two identical tapes of the audio recordings.

14 Q For how long did the undercover operation last?

15 A The operation started with the arrival of the targets on  
16 January 7th and ended with the arrest of the targets on  
17 January 10th at 10:33 in the morning.

18 Q Where were the original audio and video recordings from  
19 the hotel rooms kept during the operation?

20 A The four tapes were kept in the safe that I mentioned  
21 earlier and those which were still in the computers in the  
22 devices were still there.

23 Q When were they removed from the recording room?

24 A At the end of the operation on January 10th the tapes  
25 were removed from that recording room, were brought to our

1 office where I locked them in a vault.

2 Q You personally did that?

3 A Yes.

4 Q How long were the original audio recordings from the  
5 rooms in Germany?

6 A One original set of tapes was handed over by me  
7 personally in mid-January to the FBI agent Danny Boyd in  
8 Frankfurt.

9 Q That's the FBI agent stationed in Frankfurt?

10 A Yeah, that's the FBI liaison officer in Frankfurt.

11 THE COURT: LEGAT?

12 MS. MOORE: Yes.

13 THE COURT: They call him LEGAT, legal attache.

14 Q Let me show you what have been --

15 MS. MOORE: May I approach, Your Honor?

16 THE COURT: You may.

17 Q Let me show what you have been premarked for  
18 identification as Government Exhibits 18 A through C  
19 and 19 A through C.

20 (Pause.)

21 A Yes.

22 Q Do you recognize them?

23 A Yes, those are the tapes that I handed over to the LEGAT.

24 THE COURT: Legal attache.

25 THE WITNESS: LEGAT, Danny Boyd.

1 Q How do you recognize them?

2 A During the transfer or handing over procedure the tapes  
3 were labeled with the appropriate number and the time of  
4 recording. The white sticker here is our sticker where we  
5 write down the number of the file, the room that was surveyed  
6 and the time of surveillance. And during the handing over of  
7 the tapes I initialed this label on the lower right side and  
8 Danny Boyd initialed it in the upper left corner.

9 Q And when did you give those tapes to Danny Boyd?

10 A I know it was in the middle of January. I don't remember  
11 the exact date but it should be in the documents.

12 Q It was in the middle of January 2003?

13 A Yes.

14 Q I'm going to show you what's been premarked for  
15 identification as Government Exhibit UG-1. I ask you to take  
16 a look at it.

17 A Yes, this is the letter that confirms the transfer of  
18 these tapes, of the wire tapes from the -- the wiretapping  
19 from the telephones and the vehicle and the date on this  
20 letter is January 17th, 2003.

21 Q Does that refresh your recollection as to the specific  
22 date when you turned those original audiotapes over to Danny  
23 Boyd?

24 A Yes.

25 Q And what was that date?

1 A January 17th, 2003.

2 MS. MOORE: Your Honor, I offer Government Exhibits  
3 18 A through C and 19 A through C in evidence.

4 MR. GOODMAN: Request for voir dire on those  
5 exhibits, Your Honor.

6 THE COURT: Go ahead.

7 VOIR DIRE EXAMINATION

8 BY MR. GOODMAN:

9 Q How many separate exhibits are there, sir, how many  
10 separate tapes are there?

11 A Can you specify your question, do you mean the number of  
12 tapes or how many copies?

13 Q Cassettes, how many cassettes?

14 A There are three cassettes for the room 622, which was the  
15 room with the targets, and three cassettes of the room where  
16 the CIs were.

17 Q Do these tapes cover continuous audio recording of both  
18 rooms over all -- the whole operation?

19 A Yes.

20 Q Are there any interruptions in any of the tapes?

21 A Yes.

22 Q Does he have any record of where or when the  
23 interruptions have occurred?

24 A No.

25 Q How many interruptions are there?

1 A I don't know.

2 Q How long are the interruptions?

3 A The sequences which we checked had interruptions which  
4 went from some seconds to longer periods.

5 Q How long is the longest?

6 A I can only testify to those sequences that we checked and  
7 the longest interruption there was 20 seconds.

8 Q Are there interruptions -- withdraw that question, I'm  
9 sorry. You indicated you only -- withdraw that question.

10 What percentage of the taped conversations or taping  
11 did you check?

12 A We checked a certain time period.

13 Q What time period?

14 A I think it was on January 7th.

15 Q How long was the time period that you checked?

16 A We checked the time from 7 p.m. till 7:20 and compared  
17 all the recordings.

18 Q How many hours of recordings are there for both rooms?

19 MS. MOORE: Objection, Your Honor. This seems to be  
20 exceeding the scope of voir dire on these tapes.

21 THE COURT: No, I don't think they are but you're  
22 going to wind up soon.

23 MR. GOODMAN: I am winding up soon.

24 A I have to check the tapes or this letter.

25 Q Well, you may do so. Is he able to approximate as to the

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1 approximate number of hours?

2 A The recording was continuous, started in one room on  
3 January 6th, the other one on January 7th, and was completed  
4 on January 10th at 10:35 so it is easy to calculate.

5 MR. GOODMAN: Thank you.

6 I object to the exhibit, Your Honor. These are not  
7 complete recordings of the period -- of the places and periods  
8 in question because there are interruptions and they've only  
9 been checked for a very small percentage of the overall  
10 period.

11 THE COURT: Okay. Mr. Marks?

12 MR. MARKS: I don't object, Your Honor.

13 THE COURT: Received.

14 DIRECT EXAMINATION (Cont'd.)

15 BY MS. MOORE:

16 Q Did you keep a set of those tapes, Government Exhibits  
17 18 A through C and Government Exhibits 19 A through C in  
18 Germany?

19 A Yes. As I said earlier, we are required to make two  
20 original tapes of the recordings and the other one we kept in  
21 Germany and handed it over to the appropriate office where it  
22 is kept in a safe place.

23 Q Were the videotapes, the Alkatraz videotapes turned over  
24 to the FBI at the same time as those audiotapes?

25 A No.

1 Q Do you know approximately when they were turned over?

2 A It was approximately in December of 2003.

3 Q Let me show you what have been premarked for

4 identification as Government Exhibits 17 A and B and

5 16 A and B.

6 THE COURT: Are you going to be long with this  
7 witness, Ms. Moore?

8 MS. MOORE: A couple of more pages, Judge.

9 THE COURT: Okay.

10 Q Do you recognize them?

11 A Yes.

12 Q What are they?

13 A Those are the hard drives of the previously mentioned  
14 video computer, Alkatraz, which are also labeled with the file  
15 number, the room number that was surveilled and the time  
16 period during which the surveillance took place.

17 Q For which hotel room is Government Exhibits 16 A and B?

18 A It was the surveillance of room 6222, the room of the  
19 targets.

20 Q How about Government Exhibit 17 A and 17 B?

21 A Room of the CIs.

22 Q Do those hard drives contain only video recordings or do  
23 they also contain audio recordings?

24 A These hard drives contain video and audio recordings.

25 Q Did you keep a copy of those video recordings in Germany?

1 A Yes, before we handed over the hard drives we also made a  
2 copy for ourselves.

3 MS. MOORE: I offer Government Exhibits 16 A and B  
4 and 17 A and B in evidence.

5 MR. GOODMAN: Voir dire, if I may?

6 THE COURT: Go ahead.

7 VOIR DIRE EXAMINATION

8 BY MR. GOODMAN:

9 Q Have you checked these exhibits, sir?

10 A You mean our copies?

11 Q No, the ones in front of you?

12 A We have identical copies of those. And when we tested  
13 the videos in Germany, of course, we had to use what we had,  
14 we couldn't use these tapes.

15 Q So, the answer to my question is no?

16 A No, the question is yes.

17 Q You tested those exhibits that are marked exhibits or  
18 your copies back in Germany?

19 THE COURT: Just a second. What do you mean by  
20 test?

21 MR. GOODMAN: I'm about to ask that, whether or not  
22 he determined whether there were any interruptions, whether he  
23 determined --

24 THE COURT: Ask him the question.

25 Q All right. Did you determine whether there were any

1      interruptions on the tapes?

2    A     Yes.

3    Q     How long were the interruptions?

4    A     Yeah, following the instructions we received from the  
5      United States we tested audio and videotapes for the time  
6      between seven and 7:20 p.m. and found out that the same  
7      interruptions exist on both.

8    Q     The same interruptions exist on the cassettes?

9    A     Yes, but the interruptions on the video is delayed by  
10     40 seconds which is -- the reason for which being that the  
11     time, the clocks were not set the same way on audio and video.

12                THE COURT: They were not synchronized?

13                THE WITNESS: Correct.

14    Q     Who instructed him to test only from seven to 7:20 on  
15     January 7th?

16                THE COURT: Don't give a name.

17                MR. GOODMAN: That was from the United States,  
18     that's right. I'm not interested in a name.

19    A     The request came from the FBI in New York.

20    Q     Are those tapes, the Exhibits 16 and 17, capable of being  
21     opened on a computer that we would have here in the United  
22     States?

23    A     Of course.

24                MR. GOODMAN: Again, Your Honor, same objection. I  
25     don't think that these are verified and --

1 THE COURT: Okay, you've got the same objection.

2 Mr. Marks.

3 MR. MARKS: Just one question.

4 VOIR DIRE EXAMINATION

5 BY MR. MARKS:

6 Q Have you looked at these tapes, sir?

7 A Yes.

8 Q Have you viewed them?

9 A Which tapes?

10 Q I'm sorry, I'm talking about the hard drive.

11 A We compared the dropouts on the hard on -- on these hard  
12 drives with the dropouts on our copies and they are identical.

13 MR. MARKS: No objection.

14 THE COURT: Received.

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16 DIRECT EXAMINATION (Cont'd.)

17 BY MS. MOORE:

18 Q As you just indicated, are you aware that parts of the  
19 recorded conversations have audio failures or dropouts?

20 A Yes.

21 Q Were you and your team aware that that was happening at  
22 the time of the undercover operation in January 2003?

23 A No.

24 Q When did you find out?

25 A In the course of last year we were informed by the FBI

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1 that they found during the evaluation of the evidence certain  
2 dropouts.

3 Q What, if anything, did you do when you were advised of  
4 that?

5 A We tested the identical copies that we still had in  
6 Germany of these hard drives and found those same dropouts.

7 Q So, the copies of the recordings that you kept in Germany  
8 have the same gaps as the originals sitting in front of you?

9 A That's correct.

10 Q So, those gaps existed at the time the evidence was  
11 turned over to the FBI; is that correct?

12 A Yes.

13 Q Did you or your agents do anything intentionally to cause  
14 those gaps?

15 A No.

16 Q Do you know what caused the gaps?

17 A For audio recordings on Atis we have a voice control  
18 lever and if the volume of the voice that we are recording  
19 drops below this certain level, the Atis computer keeps  
20 recording for 15 seconds; if the voice level doesn't reach a  
21 certain level then the recording is stopped totally. If it  
22 comes back to a certain peak above this level, then the  
23 recording is continued.

24 Q After you received the request from the FBI to review  
25 your copies of the evidence did you notice anything else about

1 the Alkatraz recordings?

2 A Yes.

3 Q What did you discover about the Alkatraz?

4 A We discovered that on the Alkatraz recordings we always  
5 have the live video of the rooms surveyed but not always the  
6 live audio.

7 Q How did that happen?

8 A The sound recorded on Atis has an output that records the  
9 same audio sound on the Alkatraz. And the conversation that  
10 is being listened to, the live conversation is the one that is  
11 always put out and when there were moments when there was no  
12 conversation or nothing going on in the rooms, the  
13 interpreters took advantage of this time off and used it to  
14 listen to previous old conversations.

15 Q And were those previous old conversations then recorded  
16 onto the Alkatraz recordings?

17 A That is correct.

18 Q So, you could have a video of no one in the room with  
19 audio of an old conversation on the Alkatraz recordings?

20 A That's exactly how it is.

21 Q Did the relistening of old conversations in any way  
22 affect the Atis audio recordings?

23 A No. The Atis computer is functional, it always records  
24 live even if some old conversations are listened to.

25 Q So, just to be clear, if there were a point where the

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1 defendants were in the room sleeping and snoring and the  
2 interpreters went back to relisten to an old conversation at  
3 that point, what audio would be on the Alkatraz machine and  
4 what audio would be on the Atis machine?

5 THE COURT: Are you just about through, how long?

6 MS. MOORE: Two more minutes, maybe one more minute.

7 A So, on the Alkatraz you would have the recording of these  
8 old conversations the interpreters were listening to, on the  
9 Atis you would have what was actually happening in the room.  
10 So, if the defendants were in bed snoring, the Atis was  
11 recording snoring so nothing was ever being lost.

12 Q You mentioned in addition to the technical surveillance  
13 your squad also did some physical surveillance; what was the  
14 operational plan with respect to the physical surveillance?

15 A The targets, when they left the hotel room they were  
16 physically surveilled around the clock 24 hours a day.

17 MS. MOORE: No further questions.

18 THE COURT: I don't know if I ruled on the  
19 application 18 A through C inclusive and 19 A through C  
20 inclusive but if I didn't, they are received in evidence.

21 THE COURT: How long is it going to take for cross,  
22 and I ask this question because it is 1:40, the food is  
23 inside, we can finish up yours or we can let the jury go and  
24 have their lunch.

25 MR. GOODMAN: I would prefer a break at this time,

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1 Your Honor.

2 THE COURT: You got it. All right, ladies and  
3 gentlemen. We'll come back at -- you've been very good so you  
4 come back 3 o'clock -- 2:40. Okay.

5 (Jury leaves courtroom.)

6 (Recess taken.)

7 (Continued on next page.)

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1 (THE FOLLOWING TAKES PLACE IN CHAMBERS.)

2 THE CLERK: I came out, I was going into the jury  
3 room to check on the jurors, one of the jurors asked to talk  
4 to me, came out -- actually I talked to the first juror with  
5 the work and I told the juror that the judge called their job  
6 and they said they would work something out. I told the juror  
7 to talk to him Monday when they go back to work what exactly  
8 that means.

9 THE COURT: What it was, to make the record  
10 complete; the juror we spoke to, I forgot his name, with the  
11 problem with the job, I called this person, I don't know who  
12 it was, and he seemed sympathetic. He said that have this  
13 juror, I don't know his name, to have this juror give him a  
14 call and see if they can work something out. He didn't know  
15 whether he could pay him or not but and then Augie tells me  
16 this, there's one juror --

17 THE CLERK: This big guy was in hysterics, came out,  
18 talked to me, I closed the door. He says basically he's  
19 scared, he says these guys -- he's scared of these guys, he's  
20 afraid that they'll follow me, they'll -- and he's not afraid  
21 for himself, he's afraid for his kids and then at that point  
22 it looked like he was going to start to cry a little.

23 U.S. MARSHAL: He's crying now.

24 THE CLERK: He was crying a little. So, at that  
25 point I closed the door and I didn't bring him back, I didn't

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1 place him back into the room so that the other jurors wouldn't  
2 be compromised.

3 MS. MOORE: Your Honor, the last time that happened  
4 in a case of mine it was in front of Judge Gleeson and Judge  
5 Gleeson spoke to the juror.

6 THE COURT: I'm going to speak to him.

7 MS. MOORE: And basically assured him in that case,  
8 it didn't happen to be an anonymous jury as it is in this  
9 case, but gave him the assurance that juries are safe, there  
10 are special precautions, there's no way this juror is going to  
11 get hurt and, you know, there's no reason to think at all  
12 there should be any harm to him; perhaps, in your experience  
13 on the bench and otherwise you've never seen a juror get hurt  
14 and that may reassure him sufficiently.

15 THE COURT: I might not use those words but.

16 MS. CHEN: We have special precautions in this case.

17 MR. MARKS: I'm very troubled by this, deeply  
18 troubled by this. My concern is that this juror, that maybe  
19 there's nothing that Your Honor can say to placate him.

20 THE COURT: Well, I'm going to try anyway.

21 MR. MARKS: All right, sure.

22 (Continued on next page.)

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HOLLY DRISCOLL, CSR  
OFFICIAL COURT REPORTER

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1 THE CLERK: This is the same juror too that had the  
2 problem with Tuesday, with his kid's school.

3 THE COURT: This is the same juror who objected to  
4 being picked up by the marshals.

5 MR. MARKS: Is this the locksmith?

6 THE MARSHAL: Also the one that keeps on bringing a  
7 knife this building into the courthouse. We take it at the  
8 front door. So he is not being the most cooperative person  
9 with us.

10 THE COURT: That is the same guy?

11 THE MARSHAL: Same guy.

12 THE COURT: I'm going to bring him in and we'll talk  
13 to him.

14 MS. CHEN: I wasn't quite sure of the status of the  
15 union worker.

16                   THE COURT: I spoke to someone, whoever. He told me  
17 to call and I informed him that he was on this trial and that  
18 he on would get paid for six days and he said yes. I told him  
19 this is a very important trial, it has been in the newspaper  
20 and could you pay him or could you do something. He said I'll  
21 work with you. I don't know about paying him for six weeks  
22 but tell him to call me and we'll see if we can work something  
23 out.

24 (Juror enters chambers.)

THE COURT: Have a seat. I understand you are kind

SEALED PROCEEDINGS IN CHAMBERS

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1 of upset.

2 A JUROR: Yes, sir.

3 THE COURT: There is nothing to be upset by. One of  
4 the things that we do, the only concern that any of us have is  
5 the media. That is why they have all the jurors together and  
6 they pick you up and drop you off.

7 A JUROR: Sir, she is talking about Al-Qaeda, the  
8 terrorists and the people that are killing people left and  
9 right. I have a family at home. Four years in the marines.  
10 What they did to me before I had kids, I didn't give a damn.  
11 I have to worry about my kids. These guys can go after my  
12 family. Come hell or high water, I'm not going to risk my  
13 children.

14 THE COURT: I was in the Marine Corps too and if  
15 anybody was going to do anything, it would be the prosecutor  
16 or the defense counsel. They are not concerned with you.

17 A JUROR: I can't risk that. I can't. I'm sorry.  
18 That is crazy, we're all going to happily gamble as to whether  
19 my family is safe? I can't do that. You want to throw me in  
20 jail, throw me in jail but I'm not going to stand down one way  
21 or the other on people that she is telling me are blowing  
22 people up. You are confirming that these people are  
23 terrorists and now you are telling me to put my family on the  
24 line.

25 THE COURT: We didn't say they were terrorists.

SEALED PROCEEDINGS IN CHAMBERS

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1                   A JUROR: This is too big a risk for my family.  
2     This is crazy. This is crazy. You drop -- every morning you  
3     pick me up at the same spot, drop me off at the same spot. If  
4     anybody wanted to follow me, they could follow me to where  
5     they drop me in the van. And you can give numbers,  
6     descriptions, colors, they will find out where I live in 10  
7     minutes.

8                   THE COURT: Step outside a second.

9                   (Juror leaves chambers.)

10                  MS. MOORE: Your Honor, I think under the  
11     circumstances, it would appear appropriate to release the  
12     juror.

13                  My concern is that I'm afraid that jurors as they  
14     start vanishing through the days will think oh, I can come in  
15     and get off too.

16                  THE COURT: I'm afraid of that also but I have to  
17     deal with this situation right here.

18                  MS. MOORE: With respect to him, I can't see any way  
19     around it.

20                  MR. GOODMAN: My client can't get a fair trial from  
21     this juror, absolutely.

22                  THE COURT: We'll release him but in a situation  
23     where he won't contaminate the juror.

24                  MR. MARKS: Exactly.

25                  MS. MOORE: Perhaps we can do it in the guise of he

SEALED PROCEEDINGS IN CHAMBERS

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1 has this appointment for his kid tomorrow that he can't miss.

2 THE COURT: I won't say anything.

3 MR. MARKS: I would like to know if he has talked to  
4 any of the other jurors about this.

5 THE COURT: Augie says that he stopped him and took  
6 him aside so he wouldn't contaminate the others.

7 MR. MARKS: I want to be sure that that took care of  
8 the problem because if he has talked to any of the other  
9 jurors about this, then it's something that we ought to know  
10 because maybe your Honor could take some measures to make sure  
11 that he doesn't infect them.

12 THE CLERK: Bring him back in?

13 THE COURT: Yes.

14 (Juror enters chambers.)

15 THE COURT: Have you spoken to anyone else about  
16 your concerns?

17 A JUROR: No, other than talking to my wife.

18 MR. MARKS: What about members of the jury, have you  
19 talked to any of the other jurors?

20 THE WITNESS: No, they are all happily joking. They  
21 are not realizing what is going on.

22 THE COURT: They do realize what is going on. But  
23 do you have any books or bags in the jury room?

24 A JUROR: I have my coat.

25 MR. MARKS: Could somebody go and get that for him.

SEALED PROCEEDINGS IN CHAMBERS

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1           THE COURT: Please keep quiet.

2           What does your coat look like?

3           A JUROR: It's a brown coat with a vest. It's on  
4       the chair. It's the second chair in.

5           THE COURT: Augie, would you be able to get his  
6       coat?

7           He has this appointment with his kid?

8           THE CLERK: Do you still have the appointment for  
9       tomorrow?

10          A JUROR: My wife would have called. I don't know.

11          THE CLERK: Okay.

12          THE COURT: You are bringing it back here?

13          THE CLERK: I'm going to get the coat and he can  
14       leave. He will just go.

15          THE COURT: Will you wait outside.

16          THE CLERK: No, we'll walk him outside so the press  
17       doesn't talk to him.

18          A JUROR: I'm not talking to anybody on this. I  
19       don't need to have anybody know anything about me.

20          THE CLERK: We'll get him out one of the other ways.

21          MR. GOODMAN: Good luck.

22          (Juror leaves chambers.)

23          MR. GOODMAN: Can we have a few more minutes for  
24       lunch. I want to take a look if we can open up their hard  
25       drives.

SEALED PROCEEDINGS IN CHAMBERS

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1 MS. MOORE: You can't. The copies of the hard  
2 drives that you have are the same.

3 MS. CHEN: More important, you shouldn't be messing  
4 with them.

5 THE COURT: How long are you going to be with this  
6 guy?

7 I want to move right along.

8 MR. GOODMAN: A few minutes. I'm not going to delay  
9 anything.

10 I'll try not to, really.

11 (Luncheon recess.)

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2                   (Whereupon, the afternoon session began at afternoon  
3                   3:05 p.m.)

4                   (Jury in at 3:05 p.m.)

5                   THE COURT: Have a seat, ladies and gentlemen.

6                   Ladies and gentlemen, when I'm on trial, my jury is  
7                   my main concern but I do have other things, other trials and  
8                   other matters so that's why the 20 minute delay.

9                   I like to keep you informed on what is going on.

10                  Hopefully after this witness, we are going to have four short  
11                  witnesses and then that will be conclude and it shouldn't be  
12                  too long, direct and cross-examination.

13                  MR. GOODMAN: Thank you, your Honor.

14                  CROSS-EXAMINATION

15                  BY MR. GOODMAN:

16                  Q      Good afternoon, Mr. Glauner.

17                  THE COURT: 18 A through C inclusive and 19 A  
18                  through C inclusive.

19                  Q      Exhibits 18 and 19, if I may, how long does each of those  
20                  individual cassettes run for?

21                  A      During -- exactly during the time that the cassettes are  
22                  labeled for --

23                  THE COURT: Do you see it?

24                  MR. GOODMAN: Yes, it's in German but I can more or  
25                  less make it out.

1 Q My question really was: What is the -- if you were to  
2 run one of those cassettes, go through an entire cassette, how  
3 many hours is on each one, how many hours of capacity does  
4 each cassette have?

5 A I can't estimate. For instance, if I look at the label  
6 of this first cassette, it started on January 5th and finished  
7 on January 10th.

8 THE COURT: No, I think is your question is it a 60  
9 minute tape or is it a 120 minute tape?

10 If you know?

11 THE WITNESS: I would have to check.

12 No, I don't know.

13 THE COURT: He doesn't know.

14 MR. GOODMAN: Okay.

15 Q On a hard drive, turning your attention to the hard  
16 drive, sir, you indicated that at times the sound is played  
17 over and over several times, is that right, sir?

18 A No, I did not say that.

19 Q Then I misunderstood. I thought you had indicated that  
20 at times when the translators or interpreters were listening  
21 to all recordings, it would get recorded onto the hard drives,  
22 was I incorrect?

23 A Yes.

24 Q So does that happen only once or are there other  
25 incidences where the same sound sequence is repeated several

1 times on the hard drive?

2 A Well, if the interpreter, translators listen again and  
3 again to the same old conversation, the same old conversation  
4 will appear several times on the hard drive.

5 Q Did that happen?

6 A I don't know. I don't know the language that they were  
7 listening to.

8 Q Did he ever ask someone who can speak and understand  
9 Arabic to listen in order to make sufficient a determination?

10 THE INTERPRETER: You mean this witness?

11 MR. GOODMAN: Yes.

12 A No.

13 MR. GOODMAN: We have hooked up a copy of the hard  
14 drive and I'd like to ask him about it. I believe that  
15 counsel is willing to stipulate that what we have is the same  
16 thing that has been marked as an -- as exhibits in this case,  
17 your Honor.

18 MS. MOORE: Your Honor, I will stipulate that the  
19 hard drive they have is for the -- is a copy of the hard  
20 drives for room 6222 but not that this witness has any  
21 knowledge of that particular copy.

22 MR. GOODMAN: Let me see if I can lay a foundation  
23 here.

24 Q Did you yourself ever look at the hard drives that have  
25 been marked as exhibits in this case?

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1 A I don't understand your question.

2 Q Have you ever attempted to look and listen to the  
3 contents of Exhibits 17 -- 17 A and B and 16 A and B?

4 A No, I did not review those tapes because those tapes have  
5 been hammed over to the Americans, they were not in my  
6 possession.

7 Q Would you have any explanation for the fact that at  
8 certain times on this particular hard drive the same --  
9 precisely the same time is shown when the video recording  
10 shows different images on the screen?

11 A I don't know exactly what you mean. Can you refer to a  
12 particular time?

13 Q I can show you?

14 MR. GOODMAN: If I may, your Honor, I can  
15 demonstrate for the witness what we are talking about.

16 THE COURT: This is in evidence?

17 MR. GOODMAN: Yes, it is.

18 THE COURT: Go ahead.

19 MR. GOODMAN: So that the jury can also see perhaps  
20 the witness can step down.

21 THE COURT: Just a second.

22 Is it on this screen?

23 Let's not waste time.

24 Ask him a question.

25 MR. GOODMAN: I'm happy to proceed while we do this.

1                 THE COURT: I'm happy for you to proceed too.

2     CROSS-EXAMINATION (Continued)

3     BY MR. GOODMAN:

4     Q     You mentioned previously that the timing on one of these  
5     recordings was delayed by 40 seconds, is that correct?

6     A     The audio recording on the agent's computer and the video  
7     recording and the Atis computer are delayed by 40 seconds  
8     because the time setting on those two computers was not in  
9     synch.

10    Q     Did somebody check the synchronization of the Atis and  
11    the Alcatraz systems before you started the surveillance  
12    project?

13                 THE COURT: I'm going to sustain that. How does he  
14    know what somebody else did?

15                 MR. GOODMAN: He was supervising, your Honor.

16                 THE COURT: Do you know whether somebody else  
17    checked it?

18                 THE WITNESS: No.

19                 MR. GOODMAN: All right, we're ready here.

20    Q     The question is we see two screens in front of us both  
21    showing exactly the same times, is that not correct?

22    A     Yes.

23    Q     Same date?

24    A     Yes.

25                 THE COURT: Same room.

1 A Yes.

2 Q And the images are completely different in the two  
3 screens?

4 A Yes.

5 Q Given that fact, how can we trust the time that is  
6 demonstrated on any image that is shown on this particular  
7 hard drive?

8 THE COURT: Let him translate a little bit at a  
9 time.

10 THE INTERPRETER: He has to finish the sentence  
11 before I know what he is going to say.

12 THE COURT: All right.

13 A This is the beginning -- tapes from the beginning of the  
14 survey on January 7th and after an hour, an hour 50 minutes  
15 into the recording, one of my associates realized that the  
16 time setting was different and he readjusted it and that's why  
17 you have the different images. And that's the only time ever  
18 that this correction, adjustment of time took place.

19 Q How do you know that?

20 A Because we always check the times on a continuous basis.

21 Q So therefore, for the -- when did the recording of this  
22 start, what time did it start?

23 A How should I -- what should I go by to tell you?

24 Q When did the two gentlemen enter their room?

25 A I don't recall offhand. I would have to look into the

1 notes of the procedure of the operations.

2 Q For how many hours was the clock incorrect until it was  
3 finally corrected?

4 A If I remember correctly, about one hour and 15 minutes.

5 Q Notwithstanding the fact that the clocks were checked  
6 continuously as you previously testified, is that correct?

7 THE COURT: What you are seeing here is the court  
8 reporter who is taking everything down, that comes up right  
9 there as he is saying it and he can just read from his  
10 computer. That is something that you and I don't know but our  
11 kids do with these computers.

12 A I don't understand the connection of your question.

13 MR. GOODMAN: I'll withdraw the question.

14 Q Just one other question.

15 At what time was it discovered that the clock was  
16 wrong?

17 A I can't tell you that now. Either you have to talk to  
18 one of my associates, one of the technicians who was working  
19 during that shift or we could find out by looking at the hard  
20 drive.

21 Q We're looking at the hard drive.

22 A But this is just one picture and not a running videotape.

23 Q I understand.

24 Let's move on.

25 THE COURT: Yes, let's move on.

1                   MR. GOODMAN: Yes, your Honor.

2   Q   At some point, are there any gaps, any interruptions in  
3   the hard drive?

4   A   What kind of gap?

5   Q   An interruption on the recording.

6   A   Yes, we, I testified earlier about this time period from  
7   7:00 until 7:20 p.m. where we compared the recordings and yes,  
8   there were gaps.

9   Q   During that period you found a gap, the longest you found  
10   it was 20 seconds?

11   A   Yes, the gaps were between one and two seconds and 20  
12   seconds.

13   Q   Did you ever find a gap lasting for an hour or longer?

14   A   I didn't review all the tapes. I concentrated my review  
15   on that tape, that timeframe that the FBI asked me to check  
16   on.

17   Q   Is it in fact the case that -- withdrawn.

18                  Are you aware of a gap lasting four or five or six  
19   hours of video recording that occurred in the hard drive on  
20   January 10, 2003?

21   A   On this video hard drive you are talking about?

22   Q   Yes.

23   A   No.

24   Q   If there were such a gap, would it indicate that there  
25   were substantial problems in the accuracy and completeness of

1 the surveillance operation?

2 A You can't -- it's not easy to say it that way. It's not  
3 that simple.

4 Q Does he have any explanation for why such a gap might  
5 exist, an interruption?

6 MS. MOORE: Your Honor, could we have just have  
7 clarification in the question whether we are talking about a  
8 video gap or audio.

9 THE COURT: The Atis as opposed to the Alcatraz?

10 MR. GOODMAN: The Alcatraz.

11 MS. MOORE: The video has both the video and audio.

12 THE COURT: Be more specific.

13 MR. GOODMAN: I will, and I want to correct the  
14 date.

15 Q Is it in fact the case or can you testify one way or the  
16 other as to whether sometime in the afternoon of January  
17 the 9th, 2003, there is a gap in the video recording that  
18 lasts for hours?

19 A No.

20 Q Are you saying you can not testify to such a gap or that  
21 none exists.

22 A I don't know, I can't testify to that.

23 Q If there is such a gap or interruption in video recording  
24 that lasts for hours on the afternoon of the 9th, 2003,  
25 January 9th, would that indicate substantial problems with

1 regard to the accuracy of the surveillance program?

2 A You have to ask an engineer, a technician who specializes  
3 in this. I am not an expert to testify on that.

4 MR. GOODMAN: That is all I have.

5 CROSS-EXAMINATION

6 BY MR. MARKS:

7 Q Sir, you said that the arrest of Sheikh Al-Moayad and  
8 Mohammed Zayed took place about 10:30 on the morning of  
9 January 10th?

10 A About that time.

11 Q Where were you at that time, sir?

12 A Before the arrest, I was in the hallways outside the  
13 rooms and after our SWAT team made sure that there was no  
14 safety concerns, I together with the prosecutor walked into  
15 the room.

16 Q How many members were there on the SWAT team?

17 THE COURT: Where did you get SWAT team?

18 MR. MARKS: From the witness. That's what he said.

19 THE COURT: You said SWAT team.

20 Okay.

21 Q How many were on the SWAT team?

22 A This is a question regarding our police strategy and I'm  
23 not authorized to testify about that.

24 THE COURT: Sustained.

25 Q Did the members of the SWAT team have masks on?

1 MS. MOORE: Objection.

2 A I also am not authorized to testify to that matter.

3 THE COURT: Okay.

4 Q Did they carry automatic weapons?

5 MS. MOORE: Objection.

6 THE COURT: Sustained.

7 MR. MARKS: Thank you, sir.

8 REDIRECT EXAMINATION

9 BY MS. MOORE:

10 Q Mr. Glauner, you testified earlier that the Atis machine  
11 is designed to automatically shut down if voices do not reach  
12 a certain level, is that correct?

13 A Yes.

14 Q So if people left the hotel rooms for hours at a time,  
15 the Atis is designed to have the audio shut down at that  
16 point, is that correct?

17 A If during that period of time there are no sounds in the  
18 room which reach that level.

19 Q But if during that time something were to occur in the  
20 room like the air conditioning went on or something else, the  
21 audio could activate again, is that correct?

22 A Yes, each time the air conditioning turns itself on, yes,  
23 the Atis will record because that is above the voice control  
24 level.

25 THE COURT: So an Atis is a voice activated machine

1 or sound activated machine?

2 THE WITNESS: When the sounds in the room, whether  
3 it's voices or any other sound, reaches a certain level at  
4 which Atis is set, then Atis will record these sounds.

5 MS. MOORE: Nothing further, your Honor.

6 RECROSS-EXAMINATION

7 BY MR. GOODMAN:

8 Q Just so there is no confusion, you understood that when I  
9 talked about a gap lasting hours on the 9th, I wasn't talking  
10 about Atis, I wasn't talking about audio, I was talking about  
11 video, did you not?

12 A Yes, you talked about the video recordings.

13 Q That's right, and the video recordings should be  
14 continuous regardless whether anyone is in the room or not, is  
15 that correct?

16 A Yes.

17 MR. GOODMAN: That is all.

18 THE COURT: Mr. Marks?

19 MR. MARKS: Nothing, your Honor.

20 THE COURT: You can step down.

21 Thank you very much.

22 Have a safe trip back.

23 (Witness excused.)

24 MS. MOORE: The government calls Thomas Strudhoff.

25 S-T-R-U-D-T-H-O-F-F.

1    T H O M A S        S T R U D H O F F , having been called as a  
2       witness, first being duly sworn, was examined and  
3       testified as follows:

4                      THE COURT: Have a seat.

5                      State and spell your name for the record.

6                      THE WITNESS: My name is Thomas Strudthoff,  
7       S-T-R-U-D-H-O-F-F, T-H-O-M-A-S.

8       DIRECT EXAMINATION

9       BY MS. MOORE:

10      Q     Where do you work?

11      A     I work for the Bundeskriminalant in Germany.

12      Q     For how long have you been with the BKA?

13      A     Since 1992.

14      Q     What unit do you work in?

15      A     Mobile operation team.

16      Q     What are your duties and responsibilities in that unit?

17      A     Video and audio surveillance and physical surveillance.

18      Q     Let me direct your attention to early January 2003. Did  
19       you receive an assignment relating to technical surveillance  
20       in two hotel rooms in the Frankfurt Sheraton?

21      A     Yes.

22      Q     What, if anything, did you do in connection with that?

23      A     I was in charge of installing and connecting the devices  
24       that were used in the recording room.

25      Q     After you installed the equipment in the recording room,

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1 did you have any other assignments relating to this particular  
2 surveillance?

3 A Yes, it was our job to make sure that the equipment  
4 during my shift was functioning in a satisfactory way and that  
5 nothing was altered, that nobody tampered or altered the  
6 machines.

7 Q When was your shift?

8 A On January 7th from 6:30 in the morning until 8:00 in the  
9 evening.

10 Q Can you describe how the audio and videotapes were made  
11 in the recording room?

12 A We used two different machines, one Atis machine which  
13 makes two identical audio tapes and in addition to that, we  
14 used a video recorder, Alcatraz, which recorded the video of  
15 the rooms that were surveyed and which also had in addition to  
16 the video signal also an audio signal.

17 Q Is there any time stamp on the Alcatraz video recording?

18 A Yes.

19 Q Can that time stamp be changed from the recording room?

20 A Yes.

21 Q Did that happen during your shift?

22 A Yes.

23 Q Can you explain what happened?

24 A While we realized that the time on the machine was not  
25 the correct, the real time, so we adjusted it to the real

1 time.

2 Q When did you notice that?

3 A Early in the morning, in the morning of that day.

4 Q During your shift, who else was in the recording room?

5 A My associate with whom I shared the shift, Mr. Vivi and  
6 two interpreters were in the room.

7 Q What were the interpreters doing --

8 A Excuse me. And from time to time some other agents  
9 dropped in.

10 Q What were the interpreters doing?

11 A They listened to the audio, they translated it and passed  
12 on the information they collected.

13 Q Did they listen to the audio out loud or on listening  
14 sets?

15 A Through headsets.

16 Q Are you aware that there are gaps in some of the audio  
17 recordings of a conversation that took place during your first  
18 shift on January 7th?

19 A Yes.

20 Q Did you know that that was happening at the time?

21 A No.

22 Q Why not?

23 A While we didn't listen in all the time because we didn't  
24 understand Arabic and we didn't get any feedback, any  
25 information to that -- about that from the interpreters.

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1 Q Do you know what caused that?

2 A One explanation could be that the device was set in such  
3 a way that it started to record only if the voice level  
4 reached a certain point.

5 Q Did you do anything to intentionally cause those gaps?

6 A No.

7 Q Did you intentionally alter, manipulate any of the  
8 recordings during your shift?

9 A No.

10 Q Did you observe anyone else tamper with or manipulate the  
11 recordings during your shift?

12 A No.

13 MS. MOORE: Nothing further, your Honor.

14 THE COURT: Cross.

15 CROSS-EXAMINATION

16 BY MR. GOODMAN:

17 Q You say you discovered on the morning of the 7th a  
18 problem with the clock on the Alcatraz video recording, is  
19 that correct?

20 A Yes.

21 Q About what time, if you can recall?

22 A I don't remember the exact time.

23 Q Can you give us an estimate as to for how long a period  
24 the clock was off?

25 A Two to three hours, perhaps.

1 Q Was there any attempt made to go back to the period of  
2 time when the clock setting was incorrect and to in some way  
3 correct the video during that period?

4 A I did not understand your question.

5 Q Was any -- I withdraw that.

6 For then approximately two or three hours the video  
7 image that is shown on the hard drive is inaccurate in the  
8 sense that the clock is not appropriately set, is that  
9 correct, sir?

10 A The videotape recorded a wrong time.

11 Q Yes.

12 Was any attempt ever made to correct that, to go  
13 back to the video image on the hard drive to make a change so  
14 that it was accurate?

15 A You can't do that. It's technically not possible.

16 Q Then the answer is no, is that correct?

17 A No, we couldn't do it and that's why we didn't do it.

18 Q Was any report written by you or anyone else regarding  
19 this incident?

20 A I have not -- I didn't do that, no.

21 Q Did you serve at any date beyond January 7th from  
22 6:00 a.m. to 8:00 p.m.?

23 A No.

24 Q You say that the interpreters came into the room or were  
25 in the room while you were there wearing headphones, is that

1      correct?

2      A      Yes.

3      Q      So they were listening?

4      A      Yes.

5      Q      What were they doing as they listened, were they writing,  
6      were they dictating into a machine, were they talking to  
7      agents?

8      A      They took notes and then they passed these notes on.

9      Q      They would hand the notes to an agent?

10     A      I wouldn't know. I wouldn't know.

11     Q      You indicated just now and then on direct examination  
12     that they passed on the information. How did they pass it on?

13     A      They passed on orally the information that they had  
14     collected.

15     Q      They passed it on to?

16     A      To the CI handler.

17     Q      The FBI agent or the German organization?

18     A      There were two interpreters. The way I remember, each  
19     interpreter passed it on to the handler of their unit.

20     Q      One to the BKA and the other to the FBI, is that correct?

21     A      The way I remember it.

22            MR. GOODMAN: Thank you.

23            MR. MARKS: I don't have any questions, your Honor.

24            MS. MOORE: No redirect, your Honor.

25            THE COURT: Thank you.

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1           Have a nice trip back.

2           (Witness excused.)

3           MS. MOORE: The United States calls Nadin Gross,

4           G-R-O-S-S.

5           N-A-D-I-N     G-R-O-S-S, having been called as a  
6           witness, first being duly sworn, was examined and  
7           testified as follows:

8           THE COURT: Have a seat.

9           State and spell your name for the record.

10          THE WITNESS: Nadin Gross, N-A-D-I-N G-R-O-S-S.

11          MR. MARKS: Your Honor, can we have this chart moved  
12        so that I can see the witness.

13          THE COURT: You may proceed.

14          DIRECT EXAMINATION

15          BY MS. MOORE:

16          Q      Where do you work?

17          A      I work for the border police control.

18          Q      Where were you working in January of 2003?

19          A      For the Bundeskriminalant.

20          MR. MARKS: I couldn't hear the answer.

21          THE COURT: Bundeskriminalant.

22          Q      What unit of BKA were you working in at that time?

23          A      I worked for the mobile operation unit in the technical  
24        division for audio and video surveillance.

25          Q      In January of 2003, did you receive an assignment

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1 relating to a request for assistance from the United States?

2 A Yes.

3 Q What did you do?

4 A Within this request I did audio and video surveillance.

5 Q Did you do that in a recording room?

6 A Yes.

7 Q Did you work particular shifts?

8 A Yes.

9 Q What were your shifts?

10 A I worked during the night shift between January 7 and  
11 January 8 and during the day shift of January 9.

12 Q What was your job in the recording room?

13 A I was to make sure that the recording devices were  
14 functioning properly and to help the interpreters in case they  
15 had technical problems with the machines.

16 Q Was anyone else in the recording room with you?

17 A Yes, the interpreters and my colleague with him I shared  
18 was on my same shift.

19 Q Did you ever have to change any tapes during your shift?

20 A Yes.

21 Q How did you do that?

22 A The tapes were taken out of the machine, they were  
23 labeled with the exact time when they had been taken out and  
24 they were put into the safe.

25 Q Who knew the safe's combination?

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- 1 A Only my teammates in the technical unit.
- 2 Q How long did the tapes stay in the safe?
- 3 A Up to the end of the operation.
- 4 Q During your two shifts, did you do anything to tamper or
- 5 manipulate the recordings?
- 6 A No.
- 7 Q Did you see anyone else tamper with or manipulate the
- 8 recordings?
- 9 A No.

10 MS. MOORE: No further questions.

11 THE COURT: Cross.

12 CROSS-EXAMINATION

13 BY MR. GOODMAN:

- 14 Q Good afternoon, Ms. Gross.
- 15 You worked I think you said during the day on
- 16 January the 9th, 2003?
- 17 A Yes.
- 18 Q Which hours?
- 19 A 7:30 to 8:00 p.m.
- 20 Q 7:30 in the morning until 8:00 p.m.?
- 21 A Yes.
- 22 Q With regard to the Alcatraz recording, were there any
- 23 interruptions in the recording on the Alcatraz hard drive?
- 24 A I don't remember anything.
- 25 Q If there had been an interruption for a period of more

1 than a few minutes, would that be something that you would  
2 remember?

3 A If that had occurred, yes.

4 Q So that if we went into one of these hard drives, if we  
5 were able to open it up and we went into it, we should have  
6 continuous video recording for the whole period of time on  
7 the 9th that you were working, is that correct?

8 A I think so, yes.

9 Q There is nothing defective about the equipment at that  
10 time that you have any knowledge of, is that right?

11 A I don't remember any problems.

12 Q Now, there were interpreters in the room while you were  
13 working there, is that correct?

14 A Yes.

15 Q How many?

16 A I don't remember exactly but they also changed.

17 Q But how many at a time?

18 A At least two.

19 Q While they were listening, from time to time they would  
20 communicate what they were listening to to their handling  
21 agents or the handling agents of the confidential informants,  
22 is that correct?

23 A Not in that room, no.

24 Q Not in your room?

25 A No.

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1 Q Which room were you surveilling, by the way, was it 6622?

2 THE COURT: I think it was 6222.

3 Q 6222. I'm sorry?

4 A Both.

5 MR. GOODMAN: Thank you.

6 CROSS-EXAMINATION

7 BY MR. MARKS:

8 Q Do you happen to remember whether the interpreters were  
9 interpreting from Arabic to German or from Arabic to English?

10 A I think both.

11 MR. MARKS: Thank you.

12 THE COURT: Ms. Moore?

13 MS. MOORE: Nothing further from me, judge.

14 THE COURT: Thank you very much.

15 (Witness excused.)

16 MS. MOORE: The government calls Oliver Pulkert.

17 O-L-I-V-E-R P-U-L-K-E-R-T, having been called as a  
18 witness, first being duly sworn, was examined and  
19 testified as follows:

20 THE COURT: Will you sit down, state and spell your  
21 name for the record.

22 THE WITNESS: O-L-I-V-E-R P-U-L-K-E-R-T.

23 DIRECT EXAMINATION

24 BY MS. MOORE:

25 Q Where do you work?

1 A For the Bundeskriminalant in Germany.

2 Q For how long have you worked for the BKA?

3 A Since 1996.

4 Q What unit do you work in?

5 A I work for the mobile operation unit.

6 Q What are your responsibilities in that unit?

7 A The installation and make sure they function -- the  
8 function of the surveillance equipment.

9 Q Directing your attention to January 8 and January 10th,  
10 2003, were you assigned to work in the recording room in  
11 connection with electronic surveillance hotel rooms in the  
12 Sheraton Frankfurt?

13 A Yes.

14 Q What shifts did you work?

15 A On January 8 and January 10.

16 Q Daytime or nighttime?

17 A The day shifts which start at 7:30.

18 Q How long were the shifts?

19 A If I recall correctly, 12 hours.

20 Q What were your duties in the recording room during your  
21 shifts?

22 A I made sure that the equipment worked properly and I  
23 helped the interpreters if there would be need.

24 Q Who was in the room with you?

25 A The norm is that there are two agents from the

1        Bundeskriminalant and two interpreters.

2        Q        During your two shift did you tamper with or manipulate  
3                  the tapes in any way?

4        A        At no point in time, no.

5        Q        Did you see anyone else do so?

6        A        Definitely not during my shifts.

7                  MS. MOORE: No further questions.

8                  THE COURT: Cross.

9                  MR. GOODMAN: Thank you.

10      CROSS-EXAMINATION

11      BY MR. GOODMAN:

12      Q        What were the interpreters doing while you were in the  
13                  room?

14      A        They listened to the conversations which were recorded on  
15                  our devices and they translated them.

16      Q        Translated them how were they doing, telling somebody  
17                  what was being said, were they writing it down?

18      A        They sat where they were sitting and took notes.

19      Q        Did they tell anybody orally what was going on.

20      A        From time to time some agents from FBI or BKA dropped in  
21                  and asked and then they told the agents what they heard, what  
22                  they had heard.

23      Q        Would the agents then go out and leave them alone?

24      A        Yes.

25      Q        Were the agents walking in leisurely and asking the

1 interpreters or did they run in sometimes?

2 A The way I remembered, it was a very calm situation  
3 because we asked everybody to be very quiet in the room.

4 Q So that they not be heard?

5 A And also not to disturb the interpreters doing their  
6 work.

7 MR. GOODMAN: Okay.

8 Thank you.

**9 CROSS-EXAMINATION**

10 BY MR. MARKS:

11 Q I take it, sir, that there were wire rooms, is that  
12 right, recording rooms?

13 THE INTERPRETER: Wired rooms or recording rooms?

14 THE COURT: We call it wire rooms here.

15 Rephrase your question.

16 MR. MARKS: Sure.

17 Q You were assigned to one recording room, is that right?

18 A These are strategic steps which I can't testify to.

19 Q Oh, I see. Perhaps you could testify to this.

20 Did you -- withdrawn.

21 You said that the interpreters were listening to the  
22 conversation through earphones?

23 A I didn't exactly say that but that is true, that's how it  
24 was.

25 Q Was there also audio coming over a speaker?

1 A No, as we wanted this room to be quiet, no.

2 Q Did you ever see an FBI agent wearing headsets, a  
3 headset?

4 A Yes.

5 Q And did you yourself by the way ever wear a headset?

6 A Yes, regularly because I had to check whether the signal,  
7 the sound came in clearly through our equipment.

8 Q And sometimes you could hear speakers speaking in Arabic,  
9 yes?

10 A Yes.

11 Q And sometimes in English?

12 A Yes, there was also some English, yes.

13 MR. MARKS: Thank you.

14 Have a good trip back.

15 MS. MOORE: Nothing further for this witness,  
16 your Honor.

17 THE COURT: Have a great trip back.

18 (Witness excused.)

19 MS. MOORE: The government calls Mr. Schmidt, and I  
20 have forgotten his first name.

21 THE INTERPRETER: Steffan.

22 STEFFAN SCHMIDT, having been called as a  
23 witness, first being duly sworn, was examined and  
24 testified as follows:

25 THE COURT: Please have a seat.

1 State and spell your name for the record.

2 THE WITNESS: Steffan Schmidt, S-T-E-F-F-A-N

3 S-C-H-M-I-D-T.

4 DIRECT EXAMINATION

5 BY MS. MOORE:

6 Q Where do you work?

7 A For the Bundeskriminalant in Germany.

8 Q For how long have you worked for the BKA?

9 A More than 11 years.

10 Q What unit do you work in?

11 A I work for the mobile operation unit.

12 Q Directing your attention to January 8 and January 9 of  
13 2003, were you assigned to work in the recording room in  
14 connection with electronic surveillance in hotel rooms in the  
15 Sheraton in Frankfurt?

16 A Yes.

17 Q What shifts did you work?

18 A On two night shifts.

19 Q How long were the shifts?

20 A A little more than 12 hours.

21 Q What were your duties in the recording room during your  
22 shifts?

23 A Look after the video and audio technical devices in order  
24 to take care of problems that might occur immediately.

25 Q Who was in the room with you?

Schmidt/Direct/Moore

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1 A My colleague Fischer, sometimes our supervisor Ugo  
2 Glauner, and periodically two interpreters.

3 Q Did you say periodically?

4 A Every now and then, they left the room.

5 Q During your two shifts, did you tamper with or manipulate  
6 the tapes in any way?

7 A No.

8 Q Did you see anyone else do so?

9 A No.

10 MS. MOORE: No further questions.

11 THE COURT: Cross.

12 CROSS-EXAMINATION

13 BY MR. GOODMAN:

14 Q You indicated that periodically the interpreters would  
15 leave the room?

16 A Yes.

17 Q At what times?

18 A That, I don't know. I don't remember.

19 Q How often?

20 A Once or twice. I don't remember.

21 Q Do you know why they left?

22 A The answer is no.

23 Q Did the interpreters talk to agents from the BKA or the  
24 FBI?

25 A Yes.

1 Q Would the agents come in and out of the room at various  
2 times or were they there the whole time?

3 A I am a BKA agent. They talk to me.

4 THE COURT: I'm talking about CI handlers.

5 A No.

6 Q They did not come in and out of the room?

7 A Not that I remember, no.

8 MR. GOODMAN: Thanks.

9 MR. MARKS: Nothing, judge.

10 MS. MOORE: Just one quick question.

11 Q Your two shifts, they were the night shift, is that  
12 correct?

13 A Yes.

14 MS. MOORE: Nothing further.

15 THE COURT: Okay, you can step down.

16 Have a good flight back.

17 (Witness excused.)

18 THE COURT: Ms. Moore.

19 MS. MOORE: Your Honor, that was the end of the  
20 German witnesses.

21 THE COURT: That means, ladies and gentlemen, I  
22 always like to give you -- that is the end of the witnesses.

23 MS. MOORE: That is it for today.

24 THE COURT: That is it for today and you are going  
25 to have the weekend off and you don't have to come back until

1       Tuesday.

2           MS. MOORE: I think that is correct.

3           THE COURT: A nice long weekend.

4           No snow. It's going to be cold but you can't have  
5        everything, right?

6           So enjoy your weekend and let's try it again 9:00 on  
7        Tuesday.

8           (Jury out at 4:05 p.m.)

9           THE COURT: Everybody here have a nice weekend. And  
10       I hope Howard Jacobs is well.

11       He will be here on Tuesday?

12       MR. GOODMAN: I think he will be here on Tuesday.

13       THE COURT: Is he going to participate?

14       MR. GOODMAN: I hope so. I know that he is planning  
15       on it.

16       MS DEEK: Your Honor, if I might briefly address the  
17       issue of my admission.

18       THE COURT: I didn't sign that?

19       MS DEEK: No.

20       I am grateful for the Court's cooperation but for  
21       the record, I would like to respond to the government's  
22       statements and for the increased scrutiny of my person.

23       THE COURT: Just a second.

24       Go ahead.

25       MS DEEK: The government stated initially that the

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1 excessive delay was due to the increased need for scrutiny of  
2 my background. The government argued that that was necessary  
3 because I was born in a foreign country and as such, I posed  
4 an increase risk of passing messages along from the defendant  
5 Sheikh Al-Moayad. More recently the government conceded to my  
6 admission on the condition that nothing in my alien file gives  
7 rise to revocation of that admission and that is to my  
8 admission in this Court not simply on this case. And while I  
9 again am grateful to the Court's cooperation, I find that  
10 condition and the obstacles that the government has placed and  
11 the statement that they have made to be an infringement on the  
12 rights protected by the Constitution of the United States of  
13 which I am a citizen.

14 There is nothing in my alien file that the  
15 government could possibly find that will give rise to  
16 revocation of my admission. I came to this country at a  
17 tender age in 1982. I passed the scrutiny of the board of  
18 character and fitness review in 2004. So I fail to see the  
19 reason for the government's position.

20 THE COURT: You want to respond, Ms. Moore or Ms.  
21 Chen?

22 MS. MOORE: Yes. I'm a little confused, your Honor.  
23 We had indicated that because there are SAMS restrictions in  
24 this case, that access to communications with the defendants  
25 was conditioned on clearance by the FBI.

1                   We have cleared Ms. Deek just as we have cleared  
2       Mr. Moore also from that foreign, conditioned upon our not  
3       ascertaining anything else in their background that might  
4       cause us to revoke that. We did that because ordinarily we'd  
5       have more time to do these clearances more thoroughly. We  
6       couldn't because they came on late.

7                   Right now I don't anticipate any problems down the  
8       road. We just left the door open so that we could clear her  
9       quickly and in the off chance that something comes up in her  
10      alien file, we'd like the opportunity to review that.

11                  It has nothing to do with her general admission to  
12      this court or her admission to the bar. It has to do with  
13      communications with the defendant in this case. That is all  
14      that it pertains to. It's unique to the SAMS and she is in  
15      exactly the same situation as her other colleague at this  
16      firm, Jonathan Moore, who was also only conditionally cleared.

17                  MS DEEK: If I may respond briefly.

18                  Initially, due to the fact that I was born in a  
19      foreign country, they said this posed a risk of passing  
20      messages along from the Sheikh. That is precisely what the  
21      government said, nonetheless, I accepted the condition but I  
22      explained that the condition was on my admission and not on my  
23      passing messages to the sheikh.

24                  THE COURT: Bottom line, is that the government is  
25      saying they are not singling you out, they are treating you

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1 just as they are treating the other lawyers on the case. The  
2 bottom line is that you are being admitted.

3 MR. GOODMAN: I think the local court rule requires  
4 a motion by a current member of the bar of this Court.

5 THE COURT: I thought you did that.

6 MR. GOODMAN: Did I do it before?

7 THE COURT: Yes.

8 You're memory is getting bad.

9 (Whereupon, the trial was adjourned to February 1,  
10 2005 at 9:00 a.m.)

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